

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0216/2004

23 March 2004

*****I**

REPORT

on the proposal for a European Parliament and Council directive on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities
(COM(2003) 628 – C5-0601/2003 – 2003/0255(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Helmuth Markov

Draftsperson (*):
Elisabeth Schroedter, Committee on Employment and Social Affairs

(*) Enhanced cooperation between committees - Rule 162a

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	23
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS	27

(*) Enhanced cooperation between committees - Rule 162a

PROCEDURAL PAGE

By letter of 1 December 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and 71(1) of the EC Treaty, the proposal for a European Parliament and Council directive on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities (COM(2003) 628 – 2003/0255(COD)).

At the sitting of 3 December 2003 the President of Parliament announced that he had referred the proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Employment and Social Affairs for its opinion (C5-0601/2003).

At the sitting of 15 January 2004 the President of Parliament announced that the Committee on Employment and Social Affairs, which had been asked for its opinion, would be involved in drawing up the report under Rule 162a.

The Committee on Regional Policy, Transport and Tourism appointed Helmuth Markov rapporteur at its meeting of 21 January 2004.

The committee considered the Commission proposal and draft report at its meetings of 17 February and 17 March 2004.

At the last meeting it adopted the draft legislative resolution by 31 votes to 4, with 4 abstentions.

The following were present for the vote: Paolo Costa (chairman), Helmuth Markov (rapporteur), Sylviane H. Ainardi, Emmanouil Bakopoulos, Rolf Berend, Philip Charles Bradbourn, Giorgio Calò (for Herman Vermeer), Felipe Camisón Asensio, Luigi Cocilovo, Giovanni Claudio Fava, Jacqueline Foster, Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Roger Helmer (for Ari Vatanen), Juan de Dios Izquierdo Collado, Karsten Knolle (for Margie Sudre), Dieter-Lebrecht Koch, Giorgio Lisi, Emmanouil Mastorakis, Erik Meijer, Enrique Monsonís Domingo, James Nicholson, Camilo Nogueira Román, Josu Ortuondo Larrea, Peter Pex, Wilhelm Ernst Piecyk, Samuli Pohjamo, Bernard Poignant, Alonso José Puerta, Reinhard Rack, Ingo Schmitt, Elisabeth Schroedter (for Nelly Maes), Brian Simpson, Renate Sommer, Ulrich Stockmann, Joaquim Vairinhos, Christine de Veyrac, Dominique Vlasto (for Georg Jarzembowski) and Mark Francis Watts.

The opinion of the Committee on Employment and Social Affairs is attached.

The report was tabled on 23 March 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council directive on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities

(COM(2003) 628 – C5-0601/2003 – 2003/0255(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 628)¹,
 - having regard to Articles 251(2) and 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0601/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinion of the Committee on Employment and Social Affairs (A5-0216/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 1

1. Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport, Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport and Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of

1. Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport, Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport and Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of

¹ Not yet published in OJ

working time of persons performing mobile road transport activities are important for the creation of a common market for inland transport services.

working time of persons performing mobile road transport activities **and Regulation (EC) No 484/2002 of the European Parliament and the Council of 1 March 2002** are important for the creation of a common market for inland transport services.

Justification

Checks on compliance with the provisions of Directive 2002/484/EC (driver attestation) must also fall within the scope of this directive.

Amendment 2 Recital 3

(3) It is therefore necessary to ensure proper application of the social rules on road transport through the establishment of minimum requirements for the uniform and effective checking by the Member States of compliance with the relevant provisions. Those checks ***should*** serve to reduce and prevent infringements.

(3) It is therefore necessary to ensure proper application of the social rules on road transport through the establishment of minimum requirements for the uniform and effective checking by the Member States of compliance with the relevant provisions. Those checks ***must*** serve to reduce and prevent infringements.

Amendment 3 Recital 3 a (new)

(3a) The measures provided for in this directive pursuant to Articles 71 and 137(2) of the EC Treaty are intended not only to improve road safety but also to assist the harmonisation and improvement of social standards in the Community and promote competitiveness.

Amendment 4 Recital 4

(4) The ***replacement*** of the ***analogue tachograph by a*** digital tachograph will progressively enable a greater volume of data to be checked more swiftly and more precisely and, for that reason, Member States will increasingly be in a position to undertake a greater volume of checks. The

(4) The ***introduction*** of the digital tachograph will progressively enable a greater volume of data to be checked more swiftly and more precisely and, for that reason, Member States will increasingly be in a position to undertake a greater volume of checks. The percentage of days worked

percentage of days worked by drivers of vehicles coming within the scope of the social legislation **should** therefore be increased to **3%**.

by drivers of vehicles coming within the scope of the social legislation **shall** therefore be increased to **2%**.

Justification

The word 'replacement' is misleading, since the old tachographs cannot be replaced all at once, and two different systems will therefore coexist for a while.

Is consistent with Parliament's position as set out in the Markov report on driving and rest periods.

Amendment 5
Recital 4 a (new)

(4a) It should be an objective, where monitoring systems are concerned, for national solutions to be developed to render them interoperable and workable.

Justification

Given the fact that this EU law, the European integration of various recording systems should at least be an objective.

Amendment 6
Recital 5

5. Sufficient standard equipment **should** be available to all competent enforcement authorities to enable them to carry out their duties effectively and efficiently.

5. Sufficient standard equipment **and legal powers must** be available to all competent enforcement authorities to enable them to carry out their duties effectively and efficiently.

Justification

Checks can only be carried out in a satisfactory manner if inspecting officers have full powers to obtain the information required and impose penalties. That is not the case at present in all Member States. To guarantee effective operation, changes will have to be made.

Amendment 7
Recital 6

(6) Within each Member State **there should be** a single coordinating enforcement body acting as a national focal point, with responsibility for overseeing and implementing a coherent national enforcement strategy in consultation with other relevant competent authorities. That

(6) Within each Member State a single coordinating enforcement body acting as a national focal point **shall be designated**, with responsibility for overseeing and implementing a coherent national enforcement strategy **and achieving European interoperability of monitoring**

body **should** also compile relevant statistics.

systems in consultation with other relevant competent authorities. That body **shall** also compile relevant statistics.

Justification

See justification under amendment 5.

Amendment 8
Recital 7

(7) Co-operation between Member State enforcement authorities **should** be further promoted through concerted checks, joint training initiatives, the establishment of a common interoperable electronic system of information, and the exchange of intelligence and experience.

(7) Co-operation between Member State enforcement authorities **shall** be further promoted through concerted checks, joint training initiatives, the establishment of a common interoperable electronic system of information, and the exchange of intelligence and experience.

Amendment 9
Recital 9

(9) The measures necessary for the implementation of this Directive **should** be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(9) The measures necessary for the implementation of this Directive **shall** be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission

Amendment 10
Recital 10

(10) A common recognition of specific offences in relation to Regulation (EEC) Nos 3820/85 and 3821/85 **should** promote the harmonisation of enforcement within the Member States.

(10) A common recognition of specific offences in relation to Regulation (EEC) Nos 3820/85 and 3821/85 **shall** promote the harmonisation of enforcement within the Member States.

Amendment 11
Recital 11

(11) Since the objectives of the proposed action, namely to lay down clear common

(11) Since the objectives of the proposed action, namely to lay down clear common

rules on minimum conditions for checking the correct and uniform implementation of Directive 2002/15/EC and of Council Regulation (EEC) Nos 3820/85 and 3821/85, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for co-ordinated transnational action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

rules on minimum conditions for checking the correct and uniform implementation of Directive 2002/15/EC and of Council Regulation (EEC) Nos 3820/85 and 3821/85 **as well as Regulation (EC) No ... on the harmonisation of certain social legislation relating to road transport**, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for co-ordinated transnational action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Justification

The Council is shortly due to finalise its consideration of the Commission proposal for a regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (Markov report A4-388/2002 - COM(2001) 573).

Amendment 12 Article 1

This Directive lays down minimum conditions for **checking the correct and uniform implementation** of Regulation (EEC) Nos 3820/85 and 3821/85, **and** Directive 2002/15/EC.

This Directive lays down minimum conditions for **implementation** of Regulation (EEC) Nos 3820/85 and 3821/85, Directive 2002/15/EC **and Regulation (EC) No 484/2002 as well as the directives on the 'training of drivers'¹ and on the driver attestation for third-countries².**

1 Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC
Official Journal L 226 , 10/09/2003 P. 0004 - 0017

2 Regulation (EC) No 484/2002 of the European Parliament and of the Council of 1 March 2002 amending Council Regulations (EEC) No 881/92 and (EEC) No 3118/93 for the purposes of establishing a driver attestation

Justification

The wording is in line with the title of the proposed legislation.

Checks on compliance with the provisions of Directive 2002/484/EC (driver attestation) must also fall within the scope of this directive.

The directives on the 'training of drivers' and on the 'driver attestation for third countries' also contain social provisions and should therefore be within the scope of this Directive.

Amendment 13
Article 1 a (new) Title

Definition

Justification

Inserts a definition of 'driver' from Parliament's first reading on the proposal for a regulation on the harmonisation of certain social legislation relating to road transport (P5_TA(2003)0008, Helmuth Markov report).

Amendment 14
Article 1 a (new)

For the purposes of this Directive, 'driver' means any person who drives the vehicle even for a short period, or who is carried in the same vehicle for the purpose of driving it;

Justification

Takes over the definition of 'driver' from Parliament's first reading on the proposal for a regulation on the harmonisation of certain social legislation relating to road transport (P5_TA(2003)0008, Helmuth Markov report).

Amendment 15
Article 2, paragraph 1, second subparagraph

These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of Regulation (EEC) Nos 3820/85 and 3821/85, and of drivers and mobile workers

These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of Regulation (EEC) Nos 3820/85 and 3821/85, and of drivers and mobile workers

falling within the scope of Directive
2002/15/EC.

falling within the scope of Directive
2002/15/EC *and Regulation (EC)
No 484/2002.*

Amendment 16

Article 2, paragraph 1, third subparagraph (new)

***This Directive shall apply to vehicles
registered in the Community where the
carriage by road is undertaken:***

(a) entirely within the Community; or

***(b) between the Community and a third
country which is not a contracting party
to the European Agreement concerning
the Work of Crews of Vehicles engaged in
International Road Transport (AETR) or
passes through such a country.***

***The AETR shall apply where carriage by
road is undertaken by vehicles registered
in any Member State or any country
which is a contracting party to the AETR,
for the whole of the journey where that
journey is between the Community and a
country which is a contracting party, or
through such a country. In the case of
carriage using vehicles registered in a
third country which is not a contracting
party to the AETR, the provisions of this
Directive shall apply to that part of the
journey effected within the Community.***

Justification

*Takes over the definition of ‘driver’ from Parliament’s first reading on the proposal for a
regulation on the harmonisation of certain social legislation relating to road transport
(P5_TA(2003)0008, Helmuth Markov report).*

Amendment 17

Article 2, paragraph 2, first paragraph

2. Each Member State shall organise checks
in such a way that they cover each year at
least **3%** of days worked by drivers of
vehicles falling within the scope of
Regulation (EEC) Nos 3820/85 and 3821/85.

2. Each Member State shall organise checks
in such a way that they cover each year at
least **2%** of days worked by drivers of
vehicles falling within the scope of
Regulations (EEC) Nos 3820/85 and
3821/85.

Justification

The figure of 2% is consistent with the EP's position as set out in the Markov report on driving and rest periods. An increase in that percentage can only be justified if the possibilities for conducting checks have changed. In order to achieve balanced check results, more emphasis should be placed on checks on the premises of the undertaking and less on roadside checks. In the case of roadside checks, the emphasis should be placed on road safety, while checks on the undertaking's premises should concentrate on other aspects.

Amendment 18

Article 2, paragraph 2, second paragraph

This minimum percentage may be increased by the Commission ***in accordance with the procedure referred to in Article 13(2).***

This minimum percentage may be increased by the Commission ***following approval by Parliament, provided that transport operators have a fully functioning digital tachograph at their disposal.***

Amendment 19

Article 2, paragraph 2, third subparagraph

Not less than **30%** of the total number of the working days checked shall be checked at the roadside and not less than 50% shall be checked at the premises of undertakings.

Not less than **15%** of the total number of the working days checked shall be checked at the roadside and not less than 50% shall be checked at the premises of undertakings. ***At least 50% of inspections on the premises of undertakings must be conducted in respect of very small undertakings (not more than three vehicles).***

Justification

The purpose of this amendment is to prevent a situation in which inspecting officers focus to a very large extent on large undertakings and dispense with controls on very small undertakings, after weighing the input against the possible result.

Amendment 20

Article 2, paragraph 3

3. The information submitted to the Commission in accordance with Article 16(2) of Regulation (EEC) No 3820/85 shall include the number of drivers checked at the roadside, the number of checks at premises of undertakings, the number of working days checked and the number of infringements

3. The information submitted to the Commission in accordance with Article 16(2) of Regulation (EEC) No 3820/85 shall include the number of drivers checked at the roadside, the number of checks at premises of undertakings, the number of working days checked and the number ***and nature*** of

reported.

infringements reported.

Justification

With a view to the desired equivalent interpretation and implementation of the provisions of this directive by Member States, it is important that the nature of any infringements also be reported to the Commission.

Amendment 21
Article 3, point (a)

(a) for roadside inspections: type of road, namely whether it is a motorway, a national or a secondary road;

(a) for roadside inspections: type of road, namely whether it is a motorway, a national or a secondary road; ***road number; name and location of place of inspection; country of registration of the vehicle inspected, number of vehicles owned by the undertaking it belongs to and type of tachograph used;***

Justification

The best insight into compliance with the provisions of the legislation in force will be achieved if the range of inspection locations and vehicles inspected is as wide as possible. More information is therefore required.

Amendment 22
Article 3, point (a) a (new)

(a)a. In order to counteract discrimination, records shall be kept of the Member State of origin of vehicles, drivers and undertakings subjected to roadside inspections

Justification

To secure a better insight into possible discrimination, it will be necessary, in order to guarantee the provisions laid down in Article 4(4), for Member States to keep records of the Member State of origin of the vehicle inspected and of its driver or operating undertaking.

Amendment 23
Article 3, point c (new)

(c) The undertakings responsible for the drivers and the appropriate authorities in

the Member States shall keep a record of the data collected for the previous year.

Justification

If data is kept by two different bodies, there is a better chance of checking it.

Amendment 24
Article 4, paragraph 2 (a)

(a) sufficient provision is made for checkpoints on existing and planned roads; in particular, that service stations along the motorways can function as checkpoints;

(a) sufficient provision is made for checkpoints on existing and planned roads; in particular, that service stations, ***hospitality and parking areas and other safe locations*** along the motorways ***and service areas*** can function as checkpoints;

Justification

The best insight into compliance with the provisions of the legislation in force will be achieved if the range of inspection locations and vehicles inspected is as wide as possible. Every effort should therefore be made to ensure a balance between inspections at different locations.

Amendment 25
Article 4, paragraph 2, point (b)

(b) checks are carried out following a random rotation system.

(b) checks are carried out following a random rotation system, ***with an effort being made to secure a balance in the intensity of the checks conducted at different roadside locations.***

Amendment 26
Article 4, paragraph 2 a (new)

(2a) Roadside checks should take place when vehicles drive past the checkpoint or intend to do so. Roadside checks should only be carried out on stationary vehicles which are clearly parked in order to comply with the prescribed driving breaks and rest periods, if there are specific grounds for suspicion or if the risks involved require such action to be taken.

Justification

Checks on resting or sleeping of drivers may be counterproductive for traffic safety, since they may reduce the recuperative effect of rest periods.

Amendment 27

Article 4, paragraph 4, point (d) a (new)

(d a) type of tachograph in the vehicle.

Amendment 28

Article 4, paragraph 6

6. If, in a Member State, the findings of a roadside check on the driver of a vehicle registered in another Member State afford grounds for believing that infringements have been committed which ***cannot be detected during the check owing to lack of necessary data***, the competent authorities of the Member States concerned shall assist each other in clarifying the situation.

6. If, in a Member State, the findings of a roadside check on the driver of a vehicle registered in another Member State afford grounds for believing that infringements have been committed which ***make supplementary checks on the premises of the undertaking appear necessary***, the competent authorities of the Member States concerned shall assist each other in clarifying the situation.

Justification

This makes it clear that the provision concerns supplementary controls on the premises of undertakings.

Amendment 29

Article 6, paragraph 1

1. Checks at premises shall be planned in the light of past experience of different categories of transport. They shall also be carried out if serious infringements of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 ***or*** Directive 2002/15/EC have been detected at the roadside.

1. Checks at premises shall be planned in the light of past experience of different categories of transport ***and undertakings***. They shall also be carried out if serious infringements of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85, Directive 2002/15/EC ***or Regulation (EC) No 484/2002*** have been detected at the roadside.

Justification

The previous experience of inspection bodies with securing compliance by undertakings with the legislation in force must play a part in the planning of inspections. Paying special attention to those guilty of frequent infringements should deliver a warning effect.

Amendment 30

Article 7, paragraph 1, point (a) a (new)

(a)a. It shall lay down, together with the equivalent bodies in the other Member States, an unequivocal interpretation and uniform implementation of the provisions of Directives (EEC) Nos 3820/85 and 3821/85

Justification

As already highlighted in the Markov report on driving and rest periods, harmonisation of interpretation and implementation of legislation in and by the different Member States is of the greatest importance. Given their position, the national implementing bodies can substantively contribute to that objective.

Amendment 31

Article 7, paragraph 1, point (d) a (new)

(d a) to publish the statistical data obtained pursuant to Article 3.

Amendment 32

Article 9, paragraph 2

2. Member States shall include amongst their sanctions the temporary immobilisation of the vehicle, and/or, in the case of passenger transport, they may compel the driver to take a daily rest period, or withdraw, suspend or restrict an undertaking's licence or a driving licence. The use of sanctions shall be effective, proportionate and dissuasive.

2. Member States shall include amongst their sanctions the temporary immobilisation of the vehicle, and/or, in the case of passenger transport, they may compel the driver to take a daily rest period, or withdraw, suspend or restrict an undertaking's licence or a driving licence. The use of sanctions shall be effective, proportionate and dissuasive ***and shall be non-discriminatory in relation to the reasons laid down in Article 4(4).***

Amendment 33
Article 9, paragraph 2, 2nd subparagraph (new)

Where a Member State becomes aware of an infringement against Regulation (EEC) No 3820/85 and (EEC) No 3821/85 or against Directive 2002/15/EC, that has been 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.

Justification

In view of the fact that penalties continue to be regulated differently from one Member State to another, arrangements should be made for the Member State where an infringement is committed to apply the appropriate penalty. Cf. penalties mechanism in Regulation (EEC) No 881/92 on access to the road-haulage market in the Community.

Amendment 34
Article 9, paragraph 3

3. 3. Member States shall ensure that a system of proportionate financial sanctions is in force if non-compliance with Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 **or** Directive 2002/15/EC on the part of an undertaking, or associated consignors, freight forwarders or sub-contractors, leads to profits.

3. 3. Member States shall ensure that a system of proportionate financial sanctions is in force if non-compliance with Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85, Directive 2002/15/EC, **or Regulation (EC) No 484/2002** on the part of an undertaking, or associated consignors, freight forwarders or sub-contractors, leads to profits.

Justification

Checks on compliance with the provisions of Directive 2002/484/EC (driver attestation) must also fall within the scope of this directive.

Amendment 35
Article 9, paragraph 4(d)

(d) exceeding the maximum weekly working time of 60 hours by a margin of **20%** or more.

(d) exceeding the maximum weekly working time of 60 hours by a margin of **10%** or more.

Justification

The margin proposed by the Commission is too large to allow the Directives to be implemented with sufficient consistency.

The values set by the Commission are too generous. They would encourage widespread abuse of the maximum driving periods, thereby eroding them.

Amendment 36 Article 9, paragraph 4 a (new)

(4a) These offences equally apply to self-employed drivers and drivers of goods vehicles with a permissible maximum weight of 3.5 tonnes inclusive of trailer or semi-trailer;

Justification

a) Self-employed drivers fall within the scope of Regulation (EEC) 3820/85 but are excluded from the scope of Directive 2002/15 until 2009.

b) Drivers of vehicles of less than 3.5 tonnes are excluded from the scope of Regulation 3820/85.

Amendment 37 Article 9, paragraph 5

5. Member States shall notify to the Commission the sanctions laid down for those infringements. The Commission shall inform the other Member States accordingly.

5. Member States shall notify to the Commission ***within one year of the entry into force of this directive*** the sanctions laid down for those infringements. The Commission shall inform the other Member States accordingly.

Justification

The issue of sanctions is of decisive importance. A proposal for a Commission directive on the harmonisation of sanctions is therefore urgently necessary (compare amendment to Article 11). Member States must therefore set a date for notification to the Commission.

Amendment 38 Article 11, paragraph 1

Within three years of the entry into force of

Within three years of the entry into force of

this Directive, the Commission shall submit to the European Parliament and to the Council a report analysing the penalties set out in the legislation of the Member States for defined offences.

this Directive, the Commission shall submit to the European Parliament and to the Council a report analysing the penalties set out in the legislation of the Member States for defined offences. ***At the same time the Commission shall submit a proposal for a directive on the harmonisation of these sanctions.***

Justification

At present the fines imposed in the Member States differ quite significantly - sometimes drastically so, by more than 1000%. Harmonisation is therefore urgently necessary in order to prevent distortions of competition.

Amendment 39 Article 11, paragraph 2

The report shall indicate the degree of difference between the penalties, and ***to what extent*** harmonisation of minimum and maximum penalties for a defined offence ***should be pursued.***

The report shall indicate the degree of difference between the penalties, and ***what the effect of*** harmonisation of minimum and maximum penalties for a defined offence ***would be on securing compliance with the provisions of this directive and road safety requirements .***

Amendment 40 Article 12, paragraph 1, second subparagraph

Those guidelines shall be ***included in the*** biennial report ***referred to in Article 16(2) of Regulation (EEC) No 3820/85.***

Those guidelines shall be ***regularly published in a*** biennial report ***of the Commission.***

Justification

Since the legislative procedure for replacing Regulation (EEC) No 3820/85 is already under way, the publication of these guidelines should not be linked to this report.

Amendment 41 Article 13, paragraph 1

1. The Commission shall be assisted by the Committee established by Article 18(1) of Regulation (EEC) No 3821/85.

1. The Commission shall be assisted by the Committee established by Article 18(1) of Regulation (EEC) No 3821/85. ***The social partners should also be represented on***

this committee.

Justification

The social partners should be represented in a committee whose remit covers social provisions and the monitoring thereof.

Amendment 42
Annex I, Part A(1)

(1) daily driving periods, **breaks** and daily rest periods; also the preceding **days'** record sheets which have to be carried on board the vehicle in accordance with Article 15(7) of Regulation (EEC) No 3821/85 and/or the data stored for the same period on the driver card and/or in the memory of the recording equipment in conformity with Annex II to this Directive;

(1) daily **and weekly** driving periods, **total accumulated driving time during two consecutive weeks, breaks** and daily **and weekly** rest periods **and compensatory rest periods**; also the preceding **two weeks'** record sheets which have to be carried on board the vehicle in accordance with Article 15(7) of Regulation (EEC) No 3821/85 and/or the data **of the preceding 28 days** stored for the same period on the driver card and/or in the memory of the recording equipment in conformity with Annex II to this Directive;

Justification

The scope of checks should be clarified here and adjusted to Parliament's positions at first reading on the proposal for a regulation on the harmonisation of certain social legislation relating to road transport (P5_TA(2003)0008, Helmuth Markov report).

Amendment 43
Annex I, Part A(4)

(4) last weekly rest period;

Delete

Justification

Is to be included in paragraph(1) of this annex.

Amendment 44
Annex I, Part A, insertion after (5) (new)

If the vehicle is equipped with a digital tachograph, the following shall also be checked:

Amendment 45

Annex 1, Part A, point 6

(6) working time weekly maximum of 60 hours in any one week as laid down in Article 4(a) of Directive 2002/15/EC; **deleted**

Justification

Roadside inspections in respect of hours worked should be dropped, since the widely varying exemption provisions in the different Member States make it impossible in practice for them to be carried out as spot checks by inspection officers.

Since the definition of working time and night working in Directive 2002/15 can be interpreted differently from one country to another, it is not possible for maximum weekly working time or the number of hours of night working to be monitored in roadside checks. These can only be monitored on the premises of the undertaking. These provisions must be removed from the Annex, Part A to the Annex, Part B.

Amendment 46

Annex 1, Part A, point 7

(7) daily night-time working hours as set out in Article 7 of Directive 2002/15/EC. **deleted**

Amendment 47

Annex I, Part B(1)

(1) weekly rest periods and driving periods between these rest periods; **Delete**

Justification

Is to be dealt with in the section on road checks (Annex I, Part A) and should therefore be deleted here as an additional point to be checked.

Amendment 48

Annex I, Part B(2)

(2) two-weekly limitation of driving hours; **Delete**

Justification

Is to be dealt with in the section on road checks (Annex I, Part A) and should therefore be deleted here as an additional point to be checked.

Amendment 49
Annex I, Part B(2)(a) (new)

(2a) proof of a driver's annual leave or sick leave;

Justification

A driver's annual leave or sick leave are also of significance in connection with controlling driving and rest periods.

Amendment 50
Annex II(1)

(1) Portable computer with software capable of downloading data from the vehicle unit and driver card of the digital tachograph and analysing data or transmitting findings to a central database for analysis. This equipment ***should*** be interoperable between Member State competent enforcement authorities;

(1) Portable computer with software capable of downloading data from the vehicle unit and driver card of the digital tachograph and analysing data or transmitting findings to a central database for analysis. This equipment ***must*** be interoperable between Member State competent enforcement authorities;

Justification

Compatibility is essential, otherwise checks will result in chaos.

EXPLANATORY STATEMENT

I. Background

The establishment of the European Single Market and the liberalisation of the road traffic sector have led to a substantial increase in competition in this area. Furthermore, traffic flows have significantly increased with the expansion of trade in general, and particularly with the accession countries from Central and Eastern Europe. These framework conditions have led to an increase in the number of cases in which enterprises have sought to secure a competitive advantage by failing to comply with Community rules on driving and rest periods. In its White Paper 'European Transport Policy for 2010: Time to Decide' the Commission had already pointed out that rules on working conditions in the road haulage sector were not only inadequate but were also being poorly implemented. In its biennial reports on the transposition of Regulation (EEC) 3820/85, the Commission has drawn attention to a substantial increase in the number of recorded infringements.

The problem of ensuring the proper implementation of rules on working time in road traffic is therefore more topical than ever - not only does it raise social policy and competition issues, it is also of enormous importance for road safety.

II. The Commission proposal

1. Objective

The present legal basis governing the proper implementation of the social rules in road transport is Directive 88/599/EEC which the present proposal is intended to replace. The proposal is a response to the fact that - as mentioned above - framework conditions in road transport have significantly changed since the entry into force of the Directive in 1988. The readjustment of minimum requirements for harmonised and effective checks for enforcing compliance with the relevant provisions by Member States is intended to ensure once more that social provisions in road transport are properly implemented. The intention is both to modernise implementation measures and to improve and extend them.

2. The most important individual provisions

- As far as extending such measures is concerned, Article 2, paragraph 2, increases the percentage of minimum checks to be carried out from 1% to 3% of days. Some Member States have already achieved this level of checks. In readjusting this figure, the Commission has taken into account the introduction of the digital tachograph which makes it easier to process a large volume of data. However, the co-existence for several years of analogue and digital tachographs will temporarily complicate the evaluation of data.
- Article 4 regulates details about roadside checks. Checks are to be carried out following a random rotation system, so that drivers will have to reckon with checks throughout the road network. Article 4, paragraph 4 repeats the rules set out in the

existing Directive 88/599/EEC that roadside checks shall be carried out without discrimination and mentions possible forms of discrimination.

- Article 6 contains additional provisions regarding checks at the premises of undertakings. Serious infringements of Regulations (EEC) 3820/85 and (EEC) 3821/85 and Directive 2002/15/EC detected at the roadside will entail further checks on the premises of undertakings.
- Details concerning the main elements to be verified at roadside checks and checks on the premises of enterprises - driving periods, rest periods, etc. - are being moved to an Annex I. Annex II covers the standard equipment to be available to enforcement staff which should allow digital tachograph data to be analysed.
- Under Article 7, the Member States are required to designate a co-ordinating enforcement body. This body will be required to forward the necessary statistical data to the Commission and draw up a national enforcement strategy.
- The new rules set out in Article 9 are of central importance: Paragraph 1 requires that Member States introduce a common risk rating system for undertakings. The provisions of Article 9, paragraphs 2 and 3, are intended to ensure that the checking bodies have at their disposal the whole spectrum of sanctions. In this connection Article 9, paragraph 4, states which infringements are to be regarded as serious offences.
- Article 13 refers to the Committee set up under Regulation 3821/85 which is also intended to serve as a forum for discussing general developments in implementation in connection with the present proposal.

III. Conclusions

The Commission proposal is to be welcomed in principle. All efforts to improve the working conditions of drivers will be in vain if the question of checks on implementation of these provisions is neglected. In view of increasing traffic flows on the one hand and technical progress in the form of digital tachographs on the other it is both necessary and possible to readjust the rules of Directive 88/599/EEC.

The European Parliament has already repeatedly spoken in favour of better implementation of existing social provisions, for example in the own-initiative report on the harmonisation of social legislation (rapporteur: Mr Grosch). The discussion of the report by your rapporteur on the proposal for a European Parliament and Council regulation on the harmonisation of certain social legislation relating to road transport repeatedly highlighted this aspect.

Nevertheless, your rapporteur believes that a number of amendments to the proposal are necessary:

Unfortunately, the Council has still not submitted a common position on the proposal for a regulation on the harmonisation of certain social legislation relating to road transport (COM(2001)573). The points raised by the European Parliament at first reading should not be

neglected in the forthcoming discussion on implementation. Your rapporteur has therefore tabled a number of amendments which are based on Parliament's position at first reading (definition of 'driver', scope, subject of checks).

A number of amendments concern Article 9, paragraph 4, which lays down what infringements of Regulations (EEC) 3820/85 and (EEC) 3821/85 and Directive 2002/15/EC should be regarded as a 'serious offence'. Your rapporteur takes the view that these provisions are all too generous - less serious infringements should also be regarded as serious offences. Furthermore, it is urgently necessary to supplement the provisions of the proposal for a directive with provisions concerning sanctions. As things stand, there are drastic differences between some Member States on this issue; fines imposed for one and the same offence differ in some cases by more than 1000%. Your rapporteur has therefore tabled two amendments: one obliging the Member States to notify the Commission of sanctions for serious offences within one year; the other requiring the Commission to submit a proposal for a directive on the harmonisation of sanctions within three years.

Your rapporteur also considers that a number of amendments are necessary concerning roadside checks and checks on the premises of enterprises. The scope of checks under Annex I, Part A(1) should be expanded, thereby taking into account the introduction of the digital tachograph. An increase in the number of roadside checks, on the other hand, makes the provision of supplementary information on some points in checks on the premises of enterprises (Part B(1) and (2)) redundant.

Your rapporteur also takes the view that the recitals should clearly stress that the points made in them are objectives to be attained. A series of amendments is therefore intended to make the wording of the recitals clearer by replacing 'should' by 'must' or 'shall'.

Finally, a number of amendments are necessary to clarify the location of roadside checks and the timing of such checks. It would actually be counterproductive if checks were to be carried out on drivers who had clearly parked their vehicle so as to comply with the rest periods, since this would disturb their rest periods.

18 February 2004

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council directive on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities (COM(2003) 628 – C5-0601/2003 – 2003/0255(COD))

Draftswoman(*): Elisabeth Schroedter

(*) Enhanced cooperation between committees - Rule 162a

PROCEDURE

The Committee on Employment and Social Affairs appointed Elisabeth Schroedter draftswoman at its meeting of 17 December 2003.

It considered the draft opinion at its meetings of 21 January and 16/17 February 2004.

At the last meeting it adopted the following amendments by 14 votes to 6.

The following were present for the vote: Marie-Hélène Gillig (acting chairman), Winfried Menrad (vice-chairman), Marie-Thérèse Hermange (vice-chairman), Elisabeth Schroedter (draftsman), Jan Andersson, Elspeth Attwooll, Alejandro Cercas, Harald Ettl, Stephen Hughes, Karin Jöns, Ioannis Koukiadis (for Claude Moraes), Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Ria G.H.C. Oomen-Ruijten (for Miet Smet), Lennart Sacrédeus, Herman Schmid, Helle Thorning-Schmidt and Anne E.M. Van Lancker.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 2 a (new)

(2a) The Directive on the interoperability of electronic road toll systems¹ should, where appropriate, also be of use in connection with checks concerning social provisions. The digital tachograph should be incorporated in the monitoring system. It should also be possible to use income from road levies based on the Directive on the Eurovignette² to finance the checks referred to under Article 1.

***1 Proposal for a Directive of the European Parliament and of the Council on the widespread introduction and interoperability of electronic road toll systems in the Community/*
COM/2003/0132 final***

***2 Directive of the European Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructure
Official Journal L 187, 20/07/1999, P. 0042-0050***

Justification

It would be useful as regards the effectiveness of the above-mentioned checks at EU level if the legislation were to include the Directives on the interoperability of digital data collection systems, on the digital tachometer and on the Eurovignette.

Amendment 2
Recital 4 a (new)

(4a) It should be an objective, where monitoring systems are concerned, for national solutions to be developed to

¹ Not yet published in OJ.

render them interoperable and workable.

Justification

Given the fact that this EU law, the European integration of various recording systems should at least be an objective.

Amendment 3

Recital 6

(6) Within each Member State there should be a single coordinating enforcement body acting as a national focal point, with responsibility for overseeing and implementing a coherent national enforcement strategy in consultation with other relevant competent authorities. That body should also compile relevant statistics.

(6) Within each Member State there should be a single coordinating enforcement body acting as a national focal point, 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. That body should also compile relevant statistics.

Justification

See justification under amendment 2.

Amendment 4

Recital 11

(11) Since the objectives of the proposed action, namely to lay down clear common rules on minimum conditions for checking the correct and uniform implementation of Directive 2002/15/EC and of Council Regulation (EEC) Nos 3820/85 and 3821/85, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for co-ordinated transnational action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(11) Since the objectives of the proposed action, namely to lay down clear common rules on minimum conditions for checking the correct and uniform implementation of Directive 2002/15/EC and of Council Regulation (EEC) Nos 3820/85 and 3821/85 **as well as Regulation (EC) No ... on the harmonisation of certain social legislation relating to road transport**, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for co-ordinated transnational action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this

Directive does not go beyond what is necessary in order to achieve those objectives.

Justification

The Council is shortly due to finalise its consideration of the Commission proposal for a regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (Markov report A4-388/2002 - COM(2001) 573).

Amendment 5 Article 1

This Directive lays down minimum conditions for checking the correct and uniform implementation of Regulation (EEC) Nos 3820/85 and 3821/85, and Directive 2002/15/EC.

This Directive lays down minimum conditions for checking the correct and uniform implementation of Regulation (EEC) Nos 3820/85 and 3821/85, and Directive 2002/15/EC ***as well as the directives on the 'training of drivers'¹ and on the driver attestation for third-countries.²***

***1 Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC
Official Journal L 226 , 10/09/2003 P. 0004 - 0017***

***2 Regulation (EC) No 484/2002 of the European Parliament and of the Council of 1 March 2002 amending Council Regulations (EEC) No 881/92 and (EEC) No 3118/93 for the purposes of establishing a driver attestation
Official Journal L 076 , 19/03/2002 P. 0001 - 0006***

Justification

The directives on the 'training of drivers' and on the 'driver attestation for third countries' also contain social provisions and should therefore be within the scope of this Directive.

Amendment 6 Article 3, point c (new)

(c) The undertakings responsible for the drivers and the appropriate authorities in the Member States shall keep a record of the data collected for the previous year.

Justification

If data is kept by two different bodies, there is a better chance of checking it.

Amendment 7

Article 4, paragraph 2, point a

(a) sufficient provision is made for checkpoints on existing and planned roads; in particular, that service stations along the motorways can function as checkpoints;

(a) sufficient provision is made for checkpoints on existing and planned roads; in particular, that **road-side** service stations can function as checkpoints;

Justification

Some ordinary roads also serve as important long-distance arteries. It should be possible to carry out checks on all roads and road-side service stations in order to prevent any displacement of traffic from motorways to ordinary roads.

Amendment 8

Article 9, paragraph 4, point a

(a) exceeding the maximum daily, six-day or fortnightly driving time limits by a margin of **20%** or more;

(a) exceeding the maximum daily, six-day or fortnightly driving time limits by a margin of **10%** or more;

Justification

The margin proposed by the Commission is too large to allow the Directives to be implemented with sufficient consistency.

Amendment 9

Article 9, paragraph 4, point b

(b) disregarding the minimum daily or weekly rest period by a margin of **20%** or more;

(b) disregarding the minimum daily or weekly rest period by a margin of **10%** or more;

Justification

The margin proposed by the Commission is too large to allow the Directives to be implemented with sufficient consistency.

Amendment 10
Article 9, paragraph 4, point c

(c) disregarding the minimum break by a margin of **33%** or more;

(c) disregarding the minimum break by a margin of **15%** or more;

Justification

The margin proposed by the Commission is too large to allow the Directives to be implemented with sufficient consistency.

Amendment 11
Article 9, paragraph 4, point d

(d) exceeding the maximum weekly working time of 60 hours by a margin of **20%** or more.

(d) exceeding the maximum weekly working time of 60 hours by a margin of **10%** or more.

Justification

The margin proposed by the Commission is too large to allow the Directives to be implemented with sufficient consistency.

Amendment 12
Article 9, paragraph 4 a (new)

(4a) These offences equally apply to self-employed drivers and drivers of goods vehicles with a permissible maximum weight of 3.5 tonnes inclusive of trailer or semi-trailer;

Justification

a) Self-employed drivers fall within the scope of Regulation (EEC) 3820/85 but are excluded from the scope of Directive 2002/15 until 2009.

b) Drivers of vehicles of less than 3.5 tonnes are excluded from the scope of Regulation

Amendment 13
Article 13, paragraph 1

1. The Commission shall be assisted by the Committee established by Article 18(1) of Regulation (EEC) No 3821/85.

1. The Commission shall be assisted by the Committee established by Article 18(1) of Regulation (EEC) No 3821/85. ***The social partners should also be represented on this committee.***

Justification

The social partners should be represented in a committee whose remit covers social provisions and the monitoring thereof.

Amendment 14
Annex I, Part B, point 6

(6) check on co-liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with the rules contained in Regulation (EEC) Nos 3820/85 and 3821/85 or Directive 2002/15/EC.

(6) check on co-liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders, ***ordering customers*** or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with the rules contained in Regulation (EEC) Nos 3820/85 and 3821/85 or Directive 2002/15/EC.

Justification

Ordering customers may also be responsible.