



COMMISSION OF THE EUROPEAN COMMUNITIES

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OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on the harmonisation of certain social legislation relating to road transport and
amending Council Regulations (EEC) 3821/85 and (EC) No 2135/98**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the 43 amendments proposed by Parliament.

2. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2001)573 final - 2001/0241(COD))	12 October 2001
Date of the opinion of the European Economic and Social Committee	29 May 2001
Date of the opinion of the European Parliament following first reading	14 January 2003
Date of transmission of the amended proposal document COM(2003)0490	11 August 2003
Date of adoption of the Common Position by unanimity	9 December 2004
Date of adoption of the resolution at second reading by the European Parliament comprising 43 amendments to the Common Position	13 April 2005

3. PURPOSE OF THE PROPOSAL

The Commission proposal seeks to simplify, clarify and update the rules contained in Council Regulation (EEC) 3820/85 of 31 December 1985¹ on breaks and rest periods for drivers of

¹ OJ L 370, 31.12.1985, p.1

vehicles, as they are complex, interpreted and implemented differently in Member States, and need to reflect the considerable changes in the road transport sector over the past 20 years.

In terms of simplification, it replaces the complex compensation system for reduced daily and weekly rest periods and minimises the numerous special arrangements for particular sectors. Clarification is improved by adding a considerable number of new definitions as well as establishing a committee to look at contentious issues, while exemptions and derogations are updated and made more focused, to reflect the increasing private sector provision of public services and to limit abuse. Better enforcement is promoted by the introduction of the concept of extraterritoriality for sanctions, presumption of employer liability and co-liability for the whole transport chain.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

4.1. Amendments accepted by the Commission

Overall, the Commission can accept 14 amendments out of a total of 43. Three amendments are acceptable as they stand: 14, 33 and 76; one amendment - 45 - is acceptable in part; ten amendments are acceptable in principle or subject to redrafting: 1, 3, 5, 7, 9, 10, 15, 26, 38 and 43.

4.1.1 Amendments accepted subject to redrafting

Amendment 1 calls upon the AETR signatory states and Community to align the AETR agreement with the new Regulation as soon as possible. While the Commission agrees with this objective, the recital should not prejudice the respective competence of the Community and the Member States.

Recital 8.

“(8) The provisions of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1 July 1970 (*AETR*), as amended, should continue to apply to the carriage by road of goods and passengers 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 third country other than Switzerland and the countries party to the European Economic Area agreement or through such a country. *It is desirable to amend the AETR so as to bring it into line with the provisions of this Regulation.*”

Amendment 7 indicates that enforcement of the fortnightly driving time provision should be checkable at the roadside. This is already implicitly covered in Recital 14. However direct reference to a change in Regulation (EEC) 3821/85 is desirable. The Commission prefers a staged approach to a 28-day check at the roadside, which should be reflected in the text, as follows:

Recital 31(b) (new)

“(31b) Experience indicates that compliance with the provisions of this Regulation, in particular the specified maximum driving time over a two-week period *and the reduced weekly rest compensation arrangements*, cannot be enforced unless proper and effective supervision is brought to bear in roadside checks at least in relation to the whole of the period

concerned; drivers should have at their disposal at least 15 days' records, and after 1 January 2008, at least 28 days' records"

Amendment 26 sets out a definition of 'driving time'. The Commission would prefer a less complex definition, which simply links this period of time with what is recorded as 'driving' by the tachograph, namely:

Article 4, point (ia) (new)

“(ia) "driving time" means the duration of the driving activity recorded by the recording equipment defined in Annex 1 and Annex 1B of Council Regulation (EEC) no. 3821/85.”

4.1.2 Amendments accepted in principle

Amendment 3. While the Commission accepts that efforts should be made to ensure a clarification and uniform implementation of the rules through the proposed comitology committee, a definitive uniform interpretation could only be achieved through the European Court of Justice. The amended text reads:

Recital 13

*“(13) Full definitions of all key terms should be given in order to render interpretation easier and ensure that this Regulation is applied in a uniform manner. In addition, efforts should be made to ensure uniform [...] implementation of this Regulation by national supervisory authorities **through the committee set up under Article 24 as provided in Article 25.** The definition of "week" provided in this Regulation should not prevent drivers from starting work on any day of the week.”*

Amendment 5 now provides a specific recital for transitional measures in Article 28, paragraph 2 of the Council's common position concerning common minimum age limit provisions for drivers. The recital should refer only to the minimum age for drivers and not to driver's mates.

Recital 29(a)

“(29a) Since the provisions concerning the minimum ages of drivers have now been laid down in Article 5 of Directive 2003/59/EC1 and must be transposed by 2009, only transitional provisions concerning the minimum age of drivers [...] are required in this Regulation.”

Amendment 9 introduces a direct reference to the current Directive on minimum enforcement levels for this Regulation and indicates the Parliament's preferred shorter timeframe for the proposed increase in the percentage of checks to be performed as well as the need to include enforcement of working time rules. The Commission could accept inclusion of a reference to the enforcement directive, with the proposed increase in percentages and a reference to enforcement of working time, but would prefer to keep to the less ambitious but achievable Council deadlines.

Recital 31

“(31d) Article 2(2) of Directive 88/599/EEC stipulates that at least 1% of working days must be checked every year, of which not less than 15% are to be checked at the roadside and not less than 25% at the premises of undertakings. In view of numerous past infringements, the percentage of days checked should be progressively raised to at least 2% from 1 January

*2009, 3% from 1 January 2011 and 4% from 1 January 2013. At least 30% of all working days checked should be checked at the roadside and at least 50% at the premises of undertakings, as such checks are the only means of ascertaining a driver's overall working pattern. In addition, Directive 88/599/EEC should be amended so that the checks are also carried out **concerning** Directive 2002/15/EC.”*

Amendment 10 advocates that the provisions regarding digital tachograph and its introduction should be coordinated with those of the proposed Regulation. The Commission shares this aim and considers that the current introduction date of 5 August 2005 will ensure that digital tachograph equipped vehicles are on the market in time to be used in conjunction with the proposed rules.

Recital 31(e) (new)

“(31e) The **implementation** of provisions relating to digital tachographs should be **carried out in such a way as to complement the implementation** of this Regulation in order to achieve optimal effectiveness in monitoring and enforcing social legislation relating to road transport.”

Amendment 15 exempts tractors with a maximum speed of 40-km per hour but links them to a definition in Article 4. The Commission can accept that agricultural or forestry tractors with this maximum speed limit are exempt, but not the more generalised exemption of traction units that a linkage to the definition in Article 4 entails.

Article 3, point (ba) (new)

“(ba) **agricultural or forestry** tractors with a maximum authorised speed not exceeding 40 kilometres per hour;”;

Amendment 38 removes the national derogation for specialised vehicles transporting circus and funfair equipment. The Commission could accept this in principle, on the basis that a general exemption might be more appropriate than a national derogation for such vehicles, as some may cross national frontiers in the course of their work. It notes however that Parliament did not provide a general exemption and hence wishes to remove any exemption or derogation from these vehicles. The Commission would be opposed to this approach on practical grounds, as carriage by road by these specialised vehicles is an ancillary activity; such transport must of necessity be relatively slow and will not be subject to competitive pressure. The Commission therefore reinserts this category as a general exemption:

Article 3, point (ba) (new)

“(ba) **specialised vehicles transporting circus and fun-fair equipment;**”

Amendment 43 stipulates that Member States will lay down a common range of infringements based on a Commission proposal, which will be categorised according to their gravity. Member States will then lay down penalties for such infringements. The Commission agrees with this objective but considers that the proposed procedure is not in conformity with the institutional system of the Treaty. The Commission is of the view that, instead, the common range of infringements, and their categorisation, should be laid down by the Commission in accordance with the procedure provided in Article 24

Article 19, paragraph 1

“1. **The Commission, acting in accordance with the procedure referred to in Article 24,** shall lay down rules on a common range of infringements of this Regulation and Regulation (EEC) No 3821/85, divided into categories according to their gravity. The Member States shall provide for penalties for such infringements and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EEC) No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second paragraph of Article 29. The Commission shall inform Member States accordingly.”

4.1.3 Amendment accepted in part

Amendment 45 calls on the Commission firstly to support dialogue between Member States concerning national interpretation and application of the Regulation and secondly to submit a proposal on uniform rules for the interpretation and application of the Regulation. The Commission can accept the first part of the amendment, as this dialogue will be within the framework of the new comitology committee to be established. However it will not commit itself to proposing a uniform interpretation of the Regulation, as this would restrict the Commission’s right of initiative under the Treaty. In accordance with Article 25, this task may be undertaken by the committee set up under Article 24.

Article 22, paragraph 3(a) (new)

“3a. The Commission shall support dialogue between Member States concerning the national interpretation and *implementation* of this Regulation.”

4.2. Amendments rejected by the Commission

29 amendments are rejected: 2, 4, 6, 8, 12, 13, 17, 18, 21, 23, 24, 25, 28, 29, 30, 31, 32, 34, 35, 36, 37, 39, 40, 42, 44, 52, 54, 67 and 69.

4.2.1 General Exemptions and National Derogations

In terms of **Amendments 4, 17, 21, 36, 37, 39** and **69** the Commission maintains its view that a more focussed approach to exemptions and derogations is required. Humanitarian aid (**amendment 17**) is too broad a concept and can be subcontracted to commercial operators; privatised utilities and services, or those services in which privatised utilities compete continue to be subject to competitive pressures (**amendments 4, 37 and 69**).

In terms of the national derogation in Article 13(1)(d) concerning vehicles used by drivers where driving is not their principle activity, the Commission opposes **amendment 21** which makes a general exemption for some vehicle combinations covered by this derogation and raises the exempted distance for such combinations to 100 km. The Commission considers the provision in the common position sufficient. The Commission also rejects **amendment 36** which removes the weight limitation of 7.5 tonnes in this national derogation, as drivers of vehicles above 7.5 tonnes need to be in possession of a professional Heavy Goods Vehicle licence. Such larger vehicles would normally only be used for professional purposes and driven by professional drivers.

Amendment 39 which allows a national derogation concerning the carriage of live animals to local markets is already covered in Article 13(1)(b) where a 100-km radius is permitted – the Commission considers that the Council’s derogation should suffice.

4.2.2 Rest and Break Provisions

While in principle the Commission might support **amendments 24 and 29** raising regular daily rest to 12 hours, in practice it recognises that the Council’s common position is a delicate compromise between Member States and for this reason will reject these two amendments. As for **amendment 30**, it acknowledges the road safety concerns of permitting drivers of all passenger transport vehicles to drive for 12 consecutive days without a weekly rest. In terms of rest taken in a stationary vehicle (**amendment 31**), the Commission continues to consider that a reduced weekly rest period may be taken in a suitably equipped vehicle, as vehicle design has improved considerably over the past 20 years.

The Commission rejects **amendment 28** on breaks as this does not address the issue of potential abuse of the split break periods.

4.2.3 Amendments raising issues of clarity and practicality

The Commission rejects a number of amendments that render the text more complex, less clear or which in practice raise enforcement difficulties.

Amendments 18, 34 and 35 are unnecessary, the first because the vehicles exempted are already out of scope, the second because the provision is already in force in Directive 2002/15/EC and the final amendment because Member States are not given to overriding collective agreements within their national road transport sector.

Amendments 2, 12 and 13 apply the Regulation to vehicles registered in third countries not party to the AETR agreement, for that part of their journey within the Union. While initially favouring this solution following the Parliament’s first reading, the Commission recognises that

- this is in contradiction with the AETR agreement to which all 25 Member States have subscribed;
- within the context of the common position text, this would create a discrepancy: for the same journey - Community registered vehicles would be subject to AETR rules while non-AETR third country registered vehicles would be subject to the Regulation; and
- this could potentially mean that should the journey of a non-AETR third country registered vehicle pass through an AETR third country to the Union, both AETR rules and the Regulation would be applied to one journey.

The Commission therefore rejects these amendments for the sake of clarity and simplicity. It would point out however that it accepts the principle of **Amendment 1** to align the AETR agreement as soon as possible with the new Regulation.

Amendment 44 reduces vehicle immobilisation to a temporary sanction without clearly harmonising the circumstances under which this measure can be taken and when it should cease. For this reason the Commission rejects the amendment.

Several amendments raise definition difficulties. **Amendment 23** revises the definition of a ‘driver’ but implies that proof of purpose may be required. The Commission prefers the wider, more inclusive concept of availability. **Amendment 25** reintroduces the link between reduced weekly rest period and where it is taken, indicating that long distance drivers may take their compensating rest within three weeks. Firstly, there is no definition of long distance drivers and secondly, in road safety terms it could be argued that long distance drivers should not be able to postpone any compensating rest for a prolonged period.

Several amendments raise practical difficulties. **Amendment 6** advocates a restriction of the period of transition of the European fleet from analogue to digital tachograph use. While laudable, this cannot in practice be carried out as some older vehicles in national transport cannot be equipped with the digital tachograph. **Amendment 42** requires the Commission to report on the use of exemption clauses. This will in practice be difficult to achieve as the provisions do not always target a specific interest group with identifiable representatives in all Member States. However the Commission believes that sufficient time has already been given for those directly concerned to make their views known and for Member States to carry out consultations. It does not envisage raising the issue again in a separate proposal. **Amendment 67** redefines multi-manning by allowing the presence of one man only on board for both the first and last hours of a journey. This seems firstly to be a contradiction in terms, but more important, it means that an inspector has no obvious means of proving that a single driver was accompanied during the previous 21 hour period and could therefore benefit from the more liberal driving time and rest period rules in place for this arrangement. **Amendment 32** bans remuneration based on distance travelled or amount of goods transported. This ban would result in too rigid a form of wage or bonus regime and unnecessarily restrict the sector’s flexibility. The qualification of not endangering road safety is sufficient.

4.2.4 Digital tachograph introduction amendments

In view of the advanced state of preparations in the Member States, the Commission does not consider that there is justification for the Parliament’s proposal to delay the obligation to fit digital tachographs to new vehicles until 5 August 2006 or to delay the obligation for vehicles entering into service for the first time until 5 August 2007. Nor does it consider that there is justification for granting an additional 12 months to Member States to issue the necessary driver cards. It therefore rejects amendments 52 and 54.

4.2.5 Provisions more appropriate in the proposed enforcement Directive

Amendments 8 and **40** go into detail at length about provisions within the proposed enforcement Directive and include possible amendments to the Council’s common position on the Directive. The Commission considers that such amendments are more appropriate for the Directive, could cause confusion if now placed in the Regulation, and therefore rejects these two amendments.

5. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.