



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulation (EEC) 3821/85 on recording equipment in road transport

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1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2001) 573 final – C5–0485/2001 - 2001/0241(COD):	12 October 2001
Date of the opinion of the European Economic and Social Committee:	29 May 2002
Date of the opinion of the European Parliament, first reading:	14 January 2003
Date of transmission of the amended proposal document COM(2003)0490 – C5-0394/2003):	11 August 2003
Date of adoption of the common position:	11 June 2004

2- OBJECTIVE OF THE COMMISSION PROPOSAL

Council Regulation (EEC) 3820/85 of 31 December 1985¹ sets out rules for driving times, breaks and rest periods for drivers of vehicles, which come within the Regulation's scope, with the aim of harmonising the conditions of competition in inland transport, as well as improving road safety and driver's working conditions. Given the complex nature of the rules, the differences in interpretation and implementation between Member States, and the considerable changes in the road transport sector over the subsequent 15 years, the Commission adopted a proposal for a new Regulation to simplify, clarify and update the rules. In terms of simplification, it replaced the complex compensation system for reduced daily and weekly rest periods and minimised the numerous special arrangements for particular sectors. Clarification was improved by adding a considerable number of new definitions as well as establishing a committee to look at contentious issues, while exemptions and derogations were updated and made more focused, to reflect the increasing private sector provision of public services and to limit abuse. Better enforcement was promoted by the introduction of the concept of extraterritoriality for sanctions, presumption of employer liability and co-liability for the whole transport chain

¹ OJ L 370, 31.12.1985, p.1

The Commission also proposed that the rules be based on a 'flexible' week rather than a calendar week. However, the subsequent adoption of the sectoral working time Directive, Directive 2002/15/EC², based on a calendar week, highlighted the need for a coherent approach. The Commission heeded Parliament's opinion on the proposal, which advocated a return to a calendar week method of calculation and to a large part of the current Regulation's flexibilities. Its amended proposal incorporated the majority of Parliament's amendments, reinserting a measure of flexibility, such as reintroducing limited compensation arrangements for weekly rest, while still seeking to maintain a balance with enforceability of the rules. To facilitate the debate in Council, the amended proposal also took on board several constructive points where a consensus in Council discussions was apparent, such as updating of the digital tachograph provisions in the sister Regulation, Regulation (EEC) 3821/85³. At the same time in this Regulation and in response to Parliament, it extended the number of preceding days which enforcement staff may check on the road from 8 to 15, thus allowing greater discretion to enforcement at the roadside.

3- COMMENTS ON THE COMMON POSITION

The Council made some general changes relative to the Commission's proposal that are acceptable because they ensure its aims are met.

The first concerns the insertion of an Article postponing the date for the introduction of the digital tachograph until 5 August 2005. The Council considered that this would provide legal certainty, given that no vehicles equipped with such tachographs would be available by the current legal deadline of 5 August 2004. The Commission could accept this provision, but to guarantee complete legal certainty, the text should specify that the date of 5 August 2005 replaces that of 5 August 2004 as from that latter date.

Secondly, the common position sets out a compromise text on a daily and weekly rest package. Compared with the current Regulation, this text balances a more restrictive split daily rest provision of 3 hours plus 9 hours, with the elimination of compensation arrangements for a reduction in daily rest from 11 hours to 9 hours three times between any two weekly rest periods. For weekly rest, the current compensation arrangements by the end of a three week period are maintained, but with the possibility of a longer period for checking on the road (up to 15 previous days until 1.1.2008 and up to 28 days thereafter). In addition, every two consecutive weeks, a driver must take a normal weekly rest of at least 45 hours. The common position also sets out a more detailed table on breaks.

The Commission welcomes the simplicity of the new split daily rest, but finds the arrangement for reduced daily rest a retrograde step in terms of road safety and working conditions. While it accepts the continuation of the lengthy compensation period for weekly rest, it considers the new provision on a minimum regular weekly rest requirement over a two week period an advance, with the option of checking up to 28 days records at the roadside an advantage for enforcement staff.

Thirdly, the common position incorporates the majority of Article 9 on offences and sanctions from the sister proposal on road transport enforcement for which a political agreement was

² OJ L 80, 23.3.2002, p.35

³ OJ L 370, 31.12.1985, p.8

also obtained on 11 June 2004 in the Transport Council, although the Commission is disappointed that the list of common serious offences has been omitted. These provisions will therefore have direct effect.

Finally, while the list of national derogations has been slightly extended, overall the majority of general exemptions and national derogations in the common position remain more restrictive than in Regulation (EEC) 3820/85.

The Commission accepted wholly or in part forty-seven of the sixty-nine amendments proposed by the European Parliament at its first reading. Of these, the Council has included thirty-four, either literally or in principle, in its common position.

4- COMMISSION DETAILED COMMENTS

4.1 Amendments accepted by the Commission and incorporated in full or in part in the common position

The references below are to recitals and articles of the common position.

Amendments 1, 33, 37, 44. The common position returns to the calendar week system of calculation.

Amendments 2-5, 7, 12(part), 18(part), 25-27, 30, 41, 43, 51(part), 52, 53, 62, 64(part), 65 and 66. All these amendments bring useful clarifications to the text and are reflected in the common position.

Amendments 17 and 54. The addition of a general exemption for historic vehicles used for non-commercial purposes appears logical and is included in the common position. Likewise local postal services could continue to be excluded, on the understanding that driving is not the main activity.

Amendments 21, 34, 47 and 107(part). These amendments introduce a greater degree of flexibility for the industry.

Amendments 31, 32, 45. These amendments form part of the compromise package on daily and weekly rest.

Amendment 48. This amendment introduces co-liability for the entire transport chain. The common position in Article 10(4) amplifies the list of those potentially co-labile and concentrates on contractually agreed time schedules.

4.2 Amendments accepted by the Commission and not incorporated in the common position

Amendments 14 -16 These amendments seek to extend the Regulation's scope to courier and express delivery services as well as to third country registered vehicles for the whole of their journey within the Union. While the Commission could see merit in both cases, there was little support in Council for an extension to delivery services, while the issue of the scope of the Regulation and AETR is handled in a different way in the common position.

Amendments 28 and 29. These amendments clarify the definition of 'driver' and add a definition for driving time. The Council preferred the original broader Commission definition

of driver and considered that a definition of ‘driving time’ was contentious and unnecessary. The common position reverts to the original Commission proposal.

Amendment 78 part. The amendment reintroduces the two types of reduced weekly rest (36 hours at base; 24 hours away from base) with compensation for long distance drivers within three weeks. The Commission accepted the reintroduction of the two types of reduced weekly rest along with earlier compensation for reduced weekly rest. As part of the compromise on weekly rest, the common position returns to Regulation (EEC) 3820/85 in terms of compensation arrangements, while avoiding the two types of reduced weekly rest.

Amendment 42 part. The amendment reintroduces the concept of a split daily rest, which the Commission accepted to facilitate greater flexibility for the industry. The common position also includes split daily rest, but not in the context provided by this amendment.

Amendments 9-11, 60, 63 and 70. These amendments sought to introduce enforcement measures for the provisions of this Regulation. The Commission took them into account when formulating its proposal on enforcement⁴ and also (for amendments 9 and 70(a)) its amendment to Regulation (EEC) 3821/85 to allow checks of the previous 15 days at the roadside. The common position more accurately reflects the intention of these latter two amendments by allowing checks at the roadside to include up to 28 previous days from 1.1.2008.

4.3 Amendments rejected by the Commission yet incorporated in the common position

Amendment 20. The amendment returns to the broader general exemption for specialised vehicles for medical purposes and is included in the common position.

Amendments 23, 24 and 58. The first two amendments reinsert general exemptions for vehicles for milk collection and delivery from farms as well as the current Regulation’s extensive list of public utility vehicles. Amendment 58 reinserts the transport of slaughtered animals/slaughter waste, now as a national derogation. The common position confirms all as optional national derogations (Art. 13(1) (l), (h)) and (n)), while maintaining the Commission’s reduced list of public utility vehicles.

Amendment 49. This replaces a transport undertaking’s defence against liability for infringements with two further requirements for record keeping and an obligation to verify a driver’s total working time. The common position has incorporated the substance of these additions in Article 19(bis).

4.4 Amendments rejected by the Commission and not incorporated in the common position

Amendment 6. This obliges roadside checks to cover the current day and the previous 27 days. The common position continues to allow a measure of discretion to enforcement staff, but gives them the option from 1.1.2008 onwards of checking the previous 28 days.

Amendment 8 This amendment seeks to introduce a deadline for retrofitting all vehicles in operation with a digital tachograph. However not all these vehicles are so constructed as to be able to be fitted with a digital tachograph.

⁴ OJ L 111, 17.4.2004, p.75

Amendment 13. This amendment seeks to include the maximum weekly working time limits of the sectoral working time Directive, Directive 2002/15/EC, within the body of the Regulation. The common position does not include the form of this amendment, but nevertheless in Art. 6(2) it retains the substance, specifying that the maximum working time limit may not be exceeded.

Amendment 19. This introduces a general exemption for vehicles used for humanitarian aid.

Amendment 22. This exempts vehicles not exceeding 3.5 tonnes used for non-commercial purposes. However all vehicles not exceeding 3.5 tonnes are already excluded from the scope of the proposal.

Amendment 35. This reinserts all of Article 5 of Regulation (EEC) 3820/85 concerning minimum ages of drivers of large goods or passenger vehicles. However these provisions have already been taken up in Art. 5 of Directive 2003/59/EC⁵.

Amendment 39. The amendment limits the obligation for the driver to record driving time undertaken on vehicles outside the scope of the Regulation to urban passenger transport vehicles. The common position includes driving on all commercial vehicles outside the scope, but stipulates that this driving be recorded as ‘other work.’

Amendment 83. This proposes a break of 30 minutes every four and a half hours, which can be divided into two periods of 15 minutes. The common position retains the 45 minute break but does allow this break to be split into at least 15 minute intervals.

Amendments 55-57, 59. These amendments seek to reinsert as national derogations certain vehicle groups that the Commission proposal removed. The common position has not included them.

Amendments 67 and 69. These amendments introduce legal provisions, which run counter to the comitology rules.

Amendment 68. This amendment calls on the Commission to submit a proposal for the uniform interpretation of these rules. It is through the new committee that a common approach to these provisions will be achieved.

5- CONCLUSION

The Commission considers that the common position unanimously adopted on 9 December 2004 does not alter the aims and approach of its proposal and so can support it.

⁵ OJ L 226, 10.9.2003, p.4