



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.12.2004
COM(2004)815 final

2003/0255(COD)

**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 Directive of the European
Parliament and of the Council 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**

**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 Directive of the European Parliament and of the Council 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

(Text with EEA relevance)

1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2003) 628 final – 2003/0255(COD)):	2 December 2003
Date of the opinion of the European Economic and Social Committee:	3 June 2003
Date of the opinion of the European Parliament, first reading:	20 April 2004
Date of adoption of the common position:	9 December 2004

2- OBJECTIVE OF THE COMMISSION PROPOSAL

Council Directive 88/599/EEC of 29 November 1988 established common minimum enforcement levels for road transport driving time and rest period rules contained in Regulation (EEC) 3820/85, essentially 1% of days worked by drivers of vehicles falling within the scope of the Regulation, and a minimum of 2 concerted checks per year carried out by two or more Member State enforcement authorities. The liberalisation of the road transport sector, the advent of the single market, the subsequent rise in road transport as the dominant inland transport mode and the fierce competition now within the sector merit a better enforcement of Community social rules.

With this in mind the Commission made a proposal to increase the quantity of checks, improve the quality of checks and address the issue of a harmonised approach to infringements and sanctions.

In terms of increasing the quantity of checks, the Commission proposed raising the minimum percentage to 3% immediately, with a greater percentage of such checks being carried out at the premises (at least 50% as opposed to the current 25%) and also an increased minimum percentage being carried out at the roadside (at least 30% as opposed to the current 15%). In terms of concerted checks, the Commission proposed to increase the minimum from two to

six per year, to encourage greater cooperation and exchange of best practice on the ground between enforcement authorities.

To enhance the quality of enforcement activities, the Commission proposed minimum training and equipment for enforcement staff, the development and implementation of a national enforcement strategy by Member States, the designation of a co-ordinating body to oversee this strategy and liaise with enforcement authorities of other Member States. In terms of road infrastructure, sufficient parking areas were to be put in place to allow drivers to rest and to facilitate roadside checks. In terms of co-operation between Member State enforcement authorities, a committee would be established to facilitate exchange of best practice, prepare common rules on risk assessment of undertakings for targeting enforcement operations, agree on uniform documentation concerning proof of sick and annual leave and the criteria for a common electronic exchange of information and intelligence. Joint training sessions were also envisaged.

As regards a common approach to infringements and sanctions, the Commission proposed that Member States make available to their enforcement authorities the temporary immobilisation of a vehicle, along with other specified sanctions. Proportionate financial sanctions were proposed for those in the transport chain where non compliance of these rules has led to profits for them. A common list of serious infringements was set out, for which Member States were to notify the sanctions laid down. The Commission would then draw up a report analysing the penalties set out for serious infringements and concluding on the extent to which they should be harmonised.

3- COMMENTS ON THE COMMON 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 (EEC) 3820/85. 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. Unlike the Commission proposal, this sets a ceiling on further increases by comitology. 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. 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.

In addition, 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.

The Commission accepted wholly or in part twenty-one out of the thirty-eight amendments proposed by the European Parliament at its first reading. The Council has included eight, as they stand, in principle, or in part, in its common position. While not issuing an amended proposal following Parliament's first reading, the Commission has made clear to the Council in the course of discussions in that institution, those Parliamentary amendments which it supports and those which it rejects and the reasons for its stance.

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.

Amendment 3. The wording of this amendment reflects the aim of the key social instruments for which enforcement measures are provided through this Directive. The Council has inserted it in Recital 1 in a slightly modified form.

Amendment 12(part). The amendment ensures that the title and aim of the proposed Directive are consistent. This aspect is incorporated into the common position

Amendment 21. 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 in Article 2(2) second paragraph has been fulfilled. The Commission could also accept inclusion of the country of registration but this was not taken up in the common position.

Amendment 42. In Annex I Part A, the Commission accepts that roadside checks may also cover weekly and fortnightly driving times as well as weekly rest periods. However while the Transport Council reached a political agreement on the Commission's amended proposal on driving times and rest periods on 11 June 2004, in which a weekly driving time limit is set, the common position on enforcement of these rules does not provide a check on this new limit at the roadside. Only the inclusion of checks on weekly rest periods at the roadside is foreseen. For the Commission this is a significant missed opportunity in terms of checks on driving time.

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

Amendment 5. The amendment sets as a goal interoperability in national monitoring systems. The Commission accepted this in principle subject to coordination at EU level. While the Council common position omits any reference to interoperability; it leaves open the possibility for it to form part of the remit of the new Committee to be set up under Article 13.

Amendments 6, 7, 20, 63 and 29 (in part). These amendments seek to reinforce the aim of the proposal through the use of more definite language. However the common position retains the original text of the proposal.

Amendment 19 (part). The amendment places 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. The common position does not impose this obligation.

Amendment 24 (part). The amendment proposes various examples where provision for checkpoints should be made. The Commission supported the overall phrase concerning other 'safe locations'. The common position prefers not to elaborate on the provision for checkpoints.

Amendment 26. The amendment aims to ensure that sleeping drivers are not unnecessarily disturbed by checks. While the Council sympathised with the intention behind this amendment, it nevertheless found it too problematic in practice.

Amendment 28. The amendment emphasises 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. The common position retains the original wording, as the Council considers Article 6(4) covers this issue.

Amendment 31. The amendment places 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.

Amendment 32. The amendment seeks to ensure that any sanction, including the temporary immobilisation of a vehicle will be carried out without discrimination. The Council has transferred the Article on sanctions and immobilisation to the sister proposal on driving times and rest periods, where in the common position on that proposal under Article 19(1) there is inclusion of non-discrimination within the characteristics of sanctions to be used.

Amendments 35 - 37. The first amendment seeks to be more inclusive in what constitutes a serious offence against the maximum working time provision within Directive 2002/15/EC. The Council decided to remove this Directive from the scope of application of the proposal and also to omit any common list of serious offences. Thus the reference to those to whom the list applies also falls, as does the date for notification of specific sanctions. Nevertheless, the common position on the sister proposal on driving times and rest periods does stipulate in Articles 19(1) and 27 that the Member States are to inform the Commission of their rules on sanctions within one year.

Amendment 39. The amendment elaborates 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.

Amendment 40. The amendment allows the Commission the flexibility of publishing guidelines on enforcement practice in a separate document from its current biennial report. The common position retains the original wording.

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

Amendment 19 (part). The amendment returns to the current situation where 15% of the current minimum percentage of days worked to be checked should be at the roadside. The common position reflects this temporarily, while then moving to at least 30% after 1.1.2008.

Amendment 23 (part). The common position includes a requirement for Member States to keep a record of data collected for the previous year.

Amendment 27. The common position forbids discrimination in roadside checks on the basis of whether vehicles are fitted with an analogue or digital tachograph.

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

Amendments 1, 15, 34 and 66. These amendments require checks to include inspection of third country driver attestations. However, the relevant Regulation already prescribes a more extensive checking requirement for Member States.

Amendment 11. The amendment requires a reference to the new Regulation proposed to replace the current Regulation (EEC) 3820/85. This is unnecessary as upon adoption reference to the latter Regulation will be taken to be a reference to the new Regulation.

Amendment 13, 14 and 16. These amendments include the definition of driver and the relationship between AETR and Community rules on driving time and rest periods. The

common position on the sister proposal on driving times and rest periods has set out a different definition and relationship. These would be valid for the enforcement proposal.

Amendments 18, 30, 41. These amendments are procedurally or institutionally incorrect. An increase in the percentage of days worked to be checked cannot be authorised by the Commission and Parliament alone; an unequivocal uniform interpretation of the rules cannot be made by individual Member States, but only on a Community basis; comitology legislative provisions do not allow a legal requirement for social partner representation.

Amendments 22, 25. The requirement to retain this level of detail in records of checks appears disproportionate. Likewise, requiring a balance in the intensity of checks between locations appears too prescriptive.

Amendment 33. Mutual assistance between Member States in imposing penalties for infringements detected has been replaced by the introduction of extraterritoriality for sanctions in the sister proposal on driving times and rest periods.

Amendment 38. The Commission should not be bound to submit a proposal to harmonise sanctions, in advance of the outcome of its report on sanctions.

5- CONCLUSION

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 on 9th December 2004 by qualified majority largely follows the aims and approach of its proposal and so can support it.