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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: Directive of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities

Joint text

approved by the Conciliation Committee
provided for in Article 251(4) of the EC Treaty

DIRECTIVE 2004/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL,
of

on minimum conditions for the implementation of
Council Regulations (EEC) Nos 3820/85 and 3821/85
concerning social legislation relating to road transport activities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 8 December 2005³,

¹ Not yet published in OJ.

² OJ C 241, 28.9.2004, p. 65.

³ Opinion of the European Parliament of 20 April 2004 (OJ C 104 (E), 30.4.2004, p. 38), Council Common Position of 9 December 2004 (OJ C 63 (E), 15.3.2005, p. 1) and Position of the European Parliament of 13 April 2005 (not yet published in the Official Journal).

Whereas:

- (1) Council Regulations (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport ¹ and (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport ² and Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities³ are important for the creation of a common market for inland transport services, for road safety and for working conditions.
- (2) In its White Paper "European transport policy for 2010: time to decide", the Commission indicated the need to tighten up checks and sanctions particularly for social legislation on road transport activities, and specifically to increase the number of checks, to encourage the systematic exchange of information between Member States, to coordinate inspection activities and to promote the training of enforcement officers.
- (3) It is therefore necessary to ensure proper application and harmonised interpretation 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. Furthermore, a mechanism should be introduced which ensures that undertakings with a high risk rating should be checked more closely and more often.
- (4) The risks from driver fatigue should also be addressed through enforcement of Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.
- (5) The measures provided for in this Directive should not only lead to greater road safety but should also contribute to a harmonisation of working conditions in the Community and promote a level playing field.

¹ OJ L 370, 31.12.1985, p. 1. Regulation as amended by Directive 2003/59/EC of the European Parliament and of the Council (OJ L 226, 10.9.2003, p. 4).

² OJ L 370, 31.12.1985, p. 8. Regulation as last amended by Commission Regulation (EC) No 432/2004 (OJ L 71, 10.3.2004, p. 3).

³ OJ L 80, 23.3.2002, p. 35

- (6) The replacement of analogue tachographs by digital tachographs will progressively enable a greater volume of data to be checked more swiftly and more precisely and, for that reason, Member States will be increasingly able to undertake more checks. In terms of checks, the percentage of days worked by drivers of vehicles falling within the scope of the social legislation that are checked should therefore be gradually increased to 4%.
- (7) As regards checking systems, it must be the aim that national systems develop towards European interoperability and practicability.
- (8) Sufficient standard equipment and appropriate legal powers should be available to all enforcement units to enable them to carry out their duties effectively and efficiently.
- (9) Member States should seek to ensure, without prejudice to the proper execution of the tasks imposed by this Directive, that roadside checks are executed efficiently and quickly, with a view to completing the check in the shortest time possible and with the least delay for the driver.
- (10) Within each Member State there should be a single body for intracommunity liaison with other relevant competent authorities. That body should also compile relevant statistics. Member States should also apply a coherent national enforcement strategy on their territory and may designate a single body to coordinate its implementation.
- (11) Cooperation between Member State enforcement authorities should be further promoted through concerted checks, joint training initiatives, the electronic exchange of information, and the exchange of intelligence and experience.

- (12) Best practice in road transport enforcement operations, particularly to ensure a harmonised approach to the issue of proof of a driver's annual leave or sick leave, should be facilitated and promoted through a forum for Member State enforcement authorities.
- (13) 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 ¹.
- (14) Since the objective of this Directive, namely to lay down clear, common rules on minimum conditions for checking the correct and uniform implementation of Regulations (EEC) Nos 3820/85 and 3821/85 and Regulation (EC) No.../2005 of ... of the European Parliament and of the Council [on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98], cannot be sufficiently achieved by the Member States and can, by reason of the need for coordinated 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 that objective.
- (15) Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 ² should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ L 184, 17.7.1999, p. 23.

² OJ L 325, 29.11.1988, p. 55. Directive as amended by Regulation (EC) No 2135/98 (OJ L 274, 9.10.1998, p. 1).

Article 1
Subject-matter

This Directive lays down minimum conditions for the implementation of Regulations (EEC) Nos 3820/85 and 3821/85.

Article 2
Checking systems

1. Member States shall organise a system of appropriate and regular checks on correct and consistent implementation, as referred to in Article 1, both at the roadside and at premises of undertakings of all transport categories.

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 Regulations (EEC) Nos 3820/85 and 3821/85.

Member States shall ensure that a coherent national enforcement strategy is applied on their territory. For this purpose, Member States may designate a body for the coordination of actions taken under Articles 4 and 6, in which case the Commission and the other Member States shall be informed thereof.

2. In so far as this is not already the case, Member States shall, not later than ...*, provide authorised inspecting officers with appropriate legal powers to enable them correctly to discharge their inspection obligations as required by this Directive.

* 12 months after the entry into force of this Directive.

3. Each Member State shall organise checks in such a way that, as from ...^{*}, 1% of days worked by drivers of vehicles falling within the scope of Regulations (EEC) Nos 3820/85 and 3821/85 are checked. This percentage will increase to at least 2% from 1 January 2008 and to at least 3% from 1 January 2010.

From 1 January 2012 this minimum percentage may be increased to 4% by the Commission, in accordance with the procedure referred to in Article 12(2), provided that the statistics collected pursuant to Article 3 show that, on average, more than 90% of all vehicles checked are equipped with a digital tachograph. In making its decision, the Commission shall also take into account the effectiveness of existing enforcement measures, in particular the availability of digital tachograph data 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 30% at the premises of undertakings. From 1 January 2008 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.

4. 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 the premises of undertakings, the number of working days checked and the number and type of infringements reported, together with a record of whether passengers or goods were transported.

^{*} Date of entry into force of this Directive.

Article 3

Statistics

Member States shall ensure that statistics collected from the checks organised in accordance with Article 2(1) and (3) are broken down into the following categories:

- (a) for roadside checks:
 - (i) type of road, namely whether it is a motorway, a national or a secondary road, country of registration of the vehicle inspected, in order to avoid discrimination;
 - (ii) type of tachograph, analogue or digital;
- (b) for checks at the premises:
 - (i) type of transport activity, namely whether the activity is international or domestic, passenger or freight, own account or for hire or reward;
 - (ii) size of company fleet;
 - (iii) type of tachograph, analogue or digital.

These statistics shall be submitted biennially to the Commission and shall be published in a report.

The appropriate authorities in the Member States shall keep a record of the data collected for the previous year.

The undertakings responsible for the drivers shall keep, for a period of one year, the documents, records of results and other relevant data passed to them by the control bodies concerning checks carried out on them at their premises and/or on their drivers at the roadside.

Any further clarification required of the definitions of the categories mentioned under (a) and (b) shall be established by the Commission, in accordance with the procedure referred to in Article 12(2).

Article 4
Roadside checks

1. Roadside checks shall be organised in various places and at any time and shall cover a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.
2. Member States shall ensure that:
 - (a) sufficient provision is made for checkpoints on or nearby existing and planned roads and, if necessary, that service stations and other safe locations along motorways, can function as checkpoints;
 - (b) checks are carried out following a random rotation system, with an appropriate geographical balance.
3. The points to be verified at roadside checks are set out in Part A of Annex I. Checks may focus on a specific point if the situation so requires.
4. Without prejudice to Article 9(2), roadside checks shall be carried out without discrimination. In particular, enforcement officers shall not discriminate on any of the following grounds:
 - (a) country of registration of vehicle;
 - (b) country of residence of driver;
 - (c) country of establishment of undertaking;

- (d) origin and destination of journey;
 - (e) whether vehicles are equipped with an analogue or digital tachograph.
5. Enforcement officers shall be provided with:
- (a) a list of the principal points to be checked, as set out in Part A of Annex I;
 - (b) certain standard checking equipment, as set out in Annex II.
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.

Article 5

Concerted checks

Member States shall, at least six times per year, undertake concerted roadside checks on drivers and vehicles falling within the scope of Regulations (EEC) Nos 3820/85 and 3821/85. Such checks shall be undertaken at the same time by the enforcement authorities of two or more Member States, each operating in its own territory.

Article 6

Checks at the premises of undertakings

1. Checks at premises shall be planned in the light of past experience in relation to the various categories of transport and undertakings. They shall also be carried out if serious infringements of Regulations (EEC) Nos 3820/85 or 3821/85 have been detected at the roadside.
2. Checks at premises shall cover the points listed in Part A and Part B of Annex I.
3. Enforcement officers shall be provided with:
 - (a) a list of the principal points to be checked, as set out in Parts A and B of Annex I;
 - (b) certain standard checking equipment, as set out in Annex II.
4. Enforcement officers in a Member State shall, in the course of the check take into account any information provided by the designated coordinating enforcement body of another Member State, as referred to in Article 7(1), concerning the activities of the undertaking in question in that other Member State.
5. For the purposes of paragraphs 1 to 4, checks carried out at the premises of the competent authorities, on the basis of relevant documents or data handed over by undertakings at the request of the said authorities, shall have the same status as checks carried out at the premises of undertakings.

Article 7

Intracommunity liaison

1. Member States shall designate a body which shall have the following tasks:
 - (a) to ensure coordination with equivalent bodies in the other Member States concerned as regards actions taken under Article 5;
 - (b) to forward the biennial statistical returns to the Commission under Article 16(2) of Regulation (EEC) No 3820/85;
 - (c) to be primarily responsible for assisting the competent authorities of other Member States pursuant to Article 4(6).

The body shall be represented on the Committee referred to in Article 12(1).

2. Member States shall notify the Commission of the designation of this body and the Commission shall advise the other Member States accordingly.
3. The exchange of data, of experience and of intelligence between Member States shall be actively promoted, primarily but not exclusively through the Committee referred to in Article 12(1) and any such body as the Commission may designate in accordance with the procedure referred to in Article 12(2).

Article 8

Exchange of information

1. Information made available bilaterally under Article 17(3) of Regulation (EEC) No 3820/85 or Article 19(3) of Regulation (EEC) No 3821/85 shall be exchanged between the designated bodies notified to the Commission in accordance with Article 7(2):

(a) at least once every six months after the date of entry into force of this Directive;

(b) upon specific request by a Member State in individual cases.

2. Member States shall seek to establish systems for the electronic exchange of information. In accordance with the procedure referred to in Article 12(2), the Commission shall define a common methodology for effective information exchange.

Article 9

Risk rating system

1. Member States shall introduce a risk rating system for undertakings based on the relative number and severity of any infringements of Regulations (EEC) No 3820/85 or No 3821/85 that an individual undertaking has committed. The Commission shall support dialogue between Member States to encourage consistency between these risk rating systems.

2. Undertakings with a high-risk rating shall be checked more closely and more often. The criteria and detailed rules for implementing such a system shall be discussed in the Committee referred to in Article 12, with a view to establishing a system for the exchange of information on best practices.

3. An initial list of infringements of Regulation (EC) .../2006 and (EEC) 3821/85 is set out in Annex III.

With a view to giving guidelines on the weighting of infringements of Regulations (EEC) No 3820/85 and No 3821/85, the Commission may, as appropriate, in accordance with the procedure referred to in Article 12(2), adapt Annex III with a view to establishing guidelines on a common

range of infringements, divided into categories according to their gravity.

The category concerning the most serious infringements should include those where failure to comply with the relevant provisions of Regulations (EC) .../2006 and (EEC) 3821/85 create a high level risk of death or serious personal injury.

Article 10

Report

By ... * the Commission shall submit to the European Parliament and to the Council a report analysing the penalties for serious infringements provided for in the legislation of the Member States.

Article 11

Best practice

1. In accordance with the procedure referred to in Article 12(2), the Commission shall establish guidelines on best enforcement practice.

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

2. Member States shall establish joint training programmes on best practice to be held at least once per year and shall facilitate exchanges, at least once per year, of staff of their respective bodies for intracommunity liaison with their counterparts in other Member States.

3. An electronic and printable form shall be drawn up by the Commission in accordance with the procedure referred to in Article 12(2), to be used when a driver has been on sick leave or on annual leave, or when the driver has driven another vehicle exempted from the scope of Regulation (EEC) No 3820/85, during the period mentioned in the first indent of the first subparagraph of Article 15(7) of Regulation (EEC) No 3821/85.

4. Member States shall ensure that enforcement officers are well trained for the execution of their tasks.

* Three years of the entry into force of this Directive.

Article 12

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 18(1) of Regulation (EEC) No 3821/85.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

Article 13

Implementing measures

At the request of a Member State or on its own initiative the Commission shall, in accordance with the procedure referred to in Article 12(2), adopt implementing measures in particular with one of the following aims:

- (a) to promote a common approach for the implementation of this Directive;
- (b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EEC) No 3820/85 between enforcement authorities;
- (c) to facilitate dialogue between the industry and enforcement authorities.

Article 14

Negotiations with third countries

Once this Directive has entered into force, the Community shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive. Pending the conclusion of these negotiations, Member States shall include data on checks carried out in respect of vehicles from third countries in their returns to the Commission as set out in Article 16 (2) of Regulation 3820/85.

Article 15

Updating of the Annexes

Amendments to the Annexes which are necessary to adapt them to developments in best practice shall be adopted in accordance with the procedure referred to in Article 12(2).

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2007. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.

Article 17

Repeal

1. Directive 88/599/EEC is hereby repealed with effect from ... *.
2. References made to the repealed Directive shall be construed as being made to this Directive.

Article 18

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

* The date of entry into force of this Directive.

Part A

Roadside checks

The following points shall, in general, be covered by roadside checks:

- (1) daily and weekly driving periods, breaks and daily and weekly 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 and/or on printouts;
- (2) for the period referred to in Article 15(7) of Regulation (EEC) No 3821/85, any cases where the vehicle's authorised speed is exceeded, to be defined as being any periods of more than one minute during which the vehicle's speed exceeds 90 km/h for category N₃ vehicles or 105 km/h for category M₃ vehicles (categories N₃ and M₃ being defined in Annex I to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers)¹;
- (3) where appropriate, momentary speeds attained by the vehicle as recorded by the recording equipment in no more than the previous 24 hours' use of the vehicle;
- (4) the correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets) or, where appropriate, presence of the documents referred to in Article 14(5) of Regulation (EEC) No 3820/85.

¹ OJ L 42, 23.2.1970, p. 1. Directive as last amended by Commission Directive 2004/78/EC (OJ L 153, 30.4.2004, p. 103).

Part B

Checks at the premises of undertakings

The following points shall be checked at the premises of undertakings, in addition to those checked at the roadside:

- (1) weekly rest periods and driving periods between these rest periods;
- (2) observance of the two-weekly limitation of driving hours;
- (3) record sheets, vehicle unit and driver card data and printouts.

Member States may, if appropriate, check on the joint 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 Regulations (EEC) Nos 3820/85 and 3821/85.

Standard equipment to be available to enforcement units

Member States shall ensure that the following standard equipment is available to enforcement units carrying out the duties set out in Annex I:

- (1) equipment capable of downloading data from the vehicle unit and driver card of the digital tachograph, reading data, and analysing data and/or transmitting findings to a central database for analysis;
- (2) equipment to check the tachograph sheets.

Infringements

For the purposes of this Directive, the following non exhaustive list gives a guideline on what is to be regarded as infringements:

1. exceeding the maximum daily, six-day or fortnightly driving time limits;
2. disregarding the minimum daily or weekly rest period;
3. disregarding the minimum break;
4. tachograph not fitted in accordance with the requirements of Council (EEC) Regulation 3821/85.