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REPORT FROM THE COMMISSION

**on the implementation in 2003-2004 of Regulation (EEC) No 3820/85 on the
harmonisation of certain social legislation relating to road transport
(23rd report from the Commission on the implementation of the social legislation
relating to road transport)**

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EXECUTIVE SUMMARY

This report is the sixth in the series of Commission reports concerning the implementation of Council Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport. The Regulation concerns maximum driving times and minimum break and rest periods for professional drivers as well as control procedures. Under the accompanying Directive¹, Member States are obliged to ensure that at least 1 % of all days worked by professional drivers of lorries and buses are checked either through inspections on the premises of transport undertakings or at the roadside.

To enable the European Commission to draw up a report on the application of the Regulation's provisions, Member States are obliged to submit necessary information every two years, using a standard form. The present report is the result of compilation and analysis of data provided by Member States stemming from the inspection and enforcement activities carried out during the period 2003-2004 in relation to the provisions of Regulation (EEC) No 3820/85. Apart from presenting key statistics and main developments in the field, this report also includes Member States' views on the implementation of the Regulation.

Despite the reporting obligation imposed by the Regulation, some Member States did not provide the necessary information in due time and some did not provide data in the required format. One country provided its input only after being subject to infringement proceedings. All this caused a delay in the compilation of this biennial report by the Commission. **In order not to delay the next report, it is very important that the Member States' reports covering the years 2005-2006 reach the Commission by 30 September 2007. These reports will have to include, for the first time, information on implementation of the Working Time Directive 2002/15/EC according to its Article 13(1). This will enable the Commission to draw up a comprehensive report containing all relevant information with regard to implementation of the social rules in road transport.**

Analysis of the data received reveals that five Member States (Belgium, Germany, France, Luxembourg and Austria) increased the number of working days checked. The other Member States indicated a reduction in the number of working days checked, although they were still above the required minimum level*. Taken as a whole, the average total number of working days checked (national and non-national together) decreased during the period 2003-2004 to around 2.3 million, compared with an average of 2.6 million working days checked in the previous reporting period.

¹ OJEU L 325, 29.11.1988, p.5

* However, with regard to the legislative change that took effect on 1 April 2007, the number of working days to be checked will have to increase in each Member State to 2% in 2008.

All Member States except Sweden and Portugal exceeded the basic checking standard of 1 % of working days of professional drivers, with Germany, Spain, France, Luxembourg and Malta exceeding 2 %. Norway and Switzerland also clearly passed 2 %.

The overall number of offences recorded has continued to rise in some Member States, in a few of them significantly. Generally, offences in respect of breaks and rest periods increased while those involving driving periods decreased. The average total number of offences detected remained stable. For every 100 working days checked, European enforcement agencies detected 2,8 offences on average, which is almost the same level as in a period 2001-2002 . However, there is great variation among the Member States: in some the detection rate is over 5, while in others it is less than 1.

The situation ought to improve considerably with the new legislation on driving time and rest periods in road transport² that entered into force partly on 1st May 2006 and partly on 11 April 2007. These new rules provide a sound basis for the industry and enforcers. They provide for a targeted approach based on risk assessments, reinforce cooperation between Member States and give the Commission implementing powers to be executed with the assistance of a regulatory committee. Now all efforts need to be focused on efficient and harmonised implementation of the improved set of social rules.

² Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1) and Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

1. INTRODUCTION

This report, covering the two-year period 2003-2004, is based on the information supplied by Member States using the standard form introduced in accordance with the Commission Decision of 22 February 1993³.

All the Member States used the standard form for submitting data to the Commission. Their returns were for the most part complete, but still lack uniformity, and some of the data provided were fragmentary or lacking in some aspect. There was a delay in submitting returns. One country submitted its report only after an infringement procedure was launched. The data provided by some Member States were not complete. This delayed the compilation of the report and reduced the scope for early and effective comparison of the statistics.

The Member States which acceded to the European Union in 2004 did not yet have to submit their reports on the period 2003-2004. However, Hungary submitted a report for the whole period and Malta covered the time span from the date of accession till the end of the period, namely 1.5.2004-31.12.2004.

Norway and Switzerland also sent their reports to the Commission.

2. SUMMARY TABLES

2.1. Checks: summary

Number of days actually checked as a proportion of the minimum number of working days to be checked.

Member State	- a - Minimum number of working days to be checked	- b - Number of working days checked (nationals)	- c - Number of working days checked (non-nationals)	- d - Total number of working days checked	- e - Number of working days checked as a proportion of the minimum number of days to be checked (d/a)
Austria	464 904	611 790	299 277	911 067	1.96
Belgium ⁴	726 000	1 028 094	200 642	1 228 736	1.69
Denmark	220 000	284 954	28 624	313 578	1.43
Finland	297 000	340 885	39 801	380 686	1.28
France	2 505 000	6 143 979	1 215 203	7 359 182	2.94

³ OJ L 72, 25.3.1993, p. 33.

⁴ These figures do not incorporate data on checks carried out by social inspectors and police as they were not suitably disaggregated.

Germany	2 987 237	8 325 897	6 787 877	15 113 774	5.06
Greece	10 705	54 211	5 155	59 366	(5.55) ⁵
Hungary	560 002	669 819	148 155	817 974	1.46
Ireland	721 524	852 167	9 248	861 415	1.19
Italy	2 818 497	5 121 603	194 565	5 316 168	1.89
Luxembourg	49 455	166 382	31 204	197 586	4.00
Netherlands	544 212	498 801	64 248	563 049	1.03
Malta ⁶	128	795	16	811	6.34
Portugal ⁷	585 077	123 864	866	124 760	0.21
Spain	2 169 600	4 093 346	419 854	4 513 200	2.08
Sweden	484 000	398 733	75 862	474 595	0.98
United Kingdom	2 203 049	3 586 801	236 706	3 823 507	1.74
Norway	320 000	873 778	94 788	968 566	3.03
Switzerland ⁸	204 397	846 000	158 073	1 004 073	4.91

2.2. Offences: summary

Number of offences recorded: Articles 6, 7, 8 and 14 of Regulation (EEC) No 3820/85

Overview by Member State

Member State	Passengers				Goods				Total
	Nationals	EU countries	Third countries	Total non-nationals	Nationals	EU countries	Third countries	Total non-nationals	
Austria	1 712	823	1 116	1 939	26 612	10 496	6 146	16 642	46 905

⁵ Data received from Greece indicate a particularly low number of vehicles subject to EEC 3820/85; consequently the total minimum number of working days to be checked, resulting from a multiplication of the total number of the said vehicles and a number of days worked per driver also, appears to be particularly low. Pending further verification of these figures, the arithmetically calculated performance ratio is not further taken into consideration.

⁶ Period covered 1.5.2004 - 31.12.2004.

⁷ In the report received from Portugal, data on calculation of minimum checks were missing; therefore the figure concerning the minimum number of working days to be checked was taken from the previous report.

⁸ Period covered is year 2004.

Belgium ⁹	161	235	37	272	3 432	6 233	781	7 014	10 879
Denmark	195				6 315	29		29	6 539
Finland	1 003	0	3	3	15 142	18	70	88	16 236
France ¹⁰	103 611	27 698		27 698					131 309
Germany	28 360	2 922	2 291	5 213	631 226	73 246	32 078	105 324	770 123
Greece ¹¹									
Hungary	453	63	678	741	7 930	1 196	3 612	4 808	13 932
Ireland ¹²	600	77		77	13 299	301		301	14 277
Italy	11 477	1 217	35	1 252	90 725	2 834	391	3 225	106 679
Luxembourg	3	8	0	8	124	124	0	124	259
Netherlands	884	12	18	30	6 604	733	148	881	8 399
Malta						45			45
Portugal	91	4	0	4	1374	18	0	18	1487
Spain	2 059	294	447	741	36 649	4 147	814	4 961	44 410
Sweden	491	133	15	148	1 610	1 224	108	1 332	3 581
United Kingdom	2 825	275	7	282	27 418	11 565	767	12 332	42 857
Switzerland ¹³									6 825

Overview by category of offence*

Article	Type of offence	Number of offences
6	Driving periods	313 782
7	Breaks	431 039
8	Rest periods	435 849
14	Service timetable and duty roster	4 725

⁹ The offences recorded by police and social inspectors have not been incorporated into the Table above, as they were not suitably disaggregated.

¹⁰ France does not distinguish between nationals and non-nationals, but between residents and non-residents. It does not include detailed figures about offences in passenger and good transport but it provides with data on offences detected at road and at the premises of the undertaking

¹¹ Member State did not supply this data.

¹² Ireland reported only offences done by national and other Member States.

¹³ Switzerland reported only the total amount.

Total		1 185 395
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** Data from Sweden and Greece were not available and, consequently, are not included in the table*

3. RELATIONS AND COOPERATION BETWEEN MEMBER STATES

A few concerted checks and cooperation actions as regards implementation of enforcement measures were undertaken by some Member States.

Swedish control authorities undertook checks together with the control authorities in the other Nordic countries (Denmark, Finland and Norway).

Austria reported concerted checks with German officers in the area of Kundl (Tyrol). The German police were given the Austrian authorisation for checking vehicles on the road in Austria and worked together with their Austrian counterparts.

The UK reported checks carried out in combination with other enforcement agencies concentrating on traffic on international journeys and one pan-European check, specifically focused on vehicles carrying dangerous goods.

4. COMMENTS AND CONCLUSIONS

4.1. Proposals from Member States

Several proposals from the previous reporting period will be discussed within the Advisory Committee set up under Article 18 of Regulation (EEC) No 3821/85. No additional proposals were made by Member States during the current reporting period.

4.2. Comments

The legislation in force has been a common Community standard for setting maximum driving time limits as well as breaks and rest periods for road transport operators. Its implementation within Member States plays a vital role in enhancing road safety and fair competition, and improving drivers' working conditions.

Even though the Regulation has been binding for more than 20 years now, Member States still have differing perceptions about how to interpret and enforce this legislation. Checks are carried out with different intensity and frequency in each Member State and often by a variety of authorities acting under differing priorities and separate national rules. Some of the information provided by Member States is often not coherent and it can therefore be quite difficult to make accurate comparisons.

To address these problems new measures were introduced in 2006. The digital tachograph became mandatory for all new vehicles in all Member States, and revisions of Regulation 3820/85¹⁴ and its implementing Directive 88/599/EEC¹⁵ came into force in April 2007.

¹⁴ OJ L 370, 31.12.1985, p. 1.

¹⁵ OJ L 325, 29.11.1988, p.5

The main changes introduced by the Regulation and by the Directive with regard to enforcement are as follows:

- A new committee comprising enforcement officers from the Member States set up to assist the Commission in ensuring a harmonized interpretation and application of the rules;
- Extraterritoriality of sanctions allows an inspector at a roadside check to sanction an infringement regardless of where it was committed;
- Common range of sanctions to be set out by each Member State;
- Joint training programmes on best practices to be established by Member States;
- Enhanced cooperation: joint checking operations; joint training exchanges between Member State inspectors; information exchange on non-resident offenders.

Moreover, the period for national transposition of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities expired on 23 March 2005. Improvements to the situation, resulting from these new measures, should be seen in future reports.

4.2.1. Data submission

The lack of punctuality in the provision of information by some Member States to the Commission hinders comprehensive compilation of data and delays the finalising of the report. The submission of non-standard figures or incomplete data additionally hampers a comprehensive comparison between countries. Greece did not provide data concerning offences, and the declared number of vehicles subject to Regulation 3820/85 appears to be very low, which resulted in a low minimum number of working days to be checked and, consequently, in an apparently very high level of checks carried out¹⁶. In Portugal's report submitted only in the wake of the infringement procedure, data on calculation of minimum checks were missing. Norway and Switzerland used the standard reporting form, yet their data were not complete.

4.2.2. Checks

Compared to the previous reporting period (2001-2002), five Member States recorded an increase in the number of checks, namely Austria, Belgium, France, Germany and Luxembourg.

Most of the Member States passed the basic standard of 1 % of working days checked. The countries which carried out the fewest checks were Portugal, Sweden and the Netherlands. Sweden did not reach the required 1 % of working days checked (0.98%) and the Netherlands passed it by a small margin (1.03 %). Portugal's performance was far below the minimum requirement, with only 0.21 % of working days checked. Germany, Greece, France and Spain continued to exceed 2 % and Luxembourg also passed the 2 % mark this time. Among the

¹⁶ Cf. footnote 6.

countries that recorded a decrease in the percentage of working days checked compared to the previous reporting period, four of them noted a considerable reduction of around 0.3 percentage points. These are Sweden, the United Kingdom, Spain and Ireland. Portugal's statistics dropped by almost 1% (from 1.11 % to 0.21 %).

4.2.3. *Offences*

Most Member States provided sufficient data regarding the infringements for the relevant period. Greece did not provide data. Data submitted by the United Kingdom reflect a difficulty in allocating figures between offences in respect of driving periods, rest periods and breaks. Sweden did not allocate the offences to different articles of the Regulation.

The analysis of data shows that the total number of offences for the present period increased in some Member States, e.g. in Belgium, Denmark, Finland, Ireland, Italy, Spain and United Kingdom. Linked to this is the fact that in Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy and Luxembourg the total number of working days checked increased, while for Ireland, the Netherlands, Spain, Sweden and the United Kingdom the total number of working days checked decreased.

As in the previous report, even though several Member States report an increase, only a small rise in the total number of offences detected throughout the EU is apparent. In the period 2001-2002 a total of 1 183 379 offences were recorded, and for the period 2003-2004 the total is 1 185 395.

Compared to the previous reporting period, the number of detected offences in respect of breaks and rest periods increased, while all other offences decreased. Even though half of the Member States reported an increase in offences against Article 6 (driving periods), the total number of offences relating to driving periods decreased. The total number of offences relating to Article 7 (breaks) rose by 29 % and there has been a fall in the number of those offences only in Spain, Luxembourg and the Netherlands. Offences against Article 8 (rest periods) increased moderately. There was a noticeable reduction in the number of offences detected in connection with Article 14 regarding the service timetable and duty roster.

The ratio of the total number of infringements detected to the total number of working days checked confirms that there is still a wide disparity between Member States in successful targeting of potential offenders. During 2003-2004 Austria, Germany and Finland were the most successful, averaging 5.1, 5.0 and 4.26 offences detected per 100 working days checked over the relevant period. In some countries the detection level was over 2 offences (Denmark and Italy) per 100 working days checked, or over 1 offence (France, Ireland, Netherlands, Hungary, United Kingdom, Portugal) per 100 working days checked, but other Member States did not attain this rate. The average detection rate is almost the same as in previous reporting period, i.e.: 2.8 offences detected per 100 working days checked.

4.2.4. *Interpretation of Council Regulations No 3820/85 and No 3821/85 through rulings made by the Court of Justice of the European Communities*

In its ruling of 16 January 2003 (*Libor Cipra and Vlastimil Kvasnicka v Bezirkshauptmannschaft Mistelbach*), C-439/2001, the Court established that in the case of transport by more than one driver, Article 8(2) of Council Regulation 3820/85 applies as a *lex specialis* that prevails over paragraph 1 of that Article. Consequently, those provisions are not to be applied cumulatively and the drivers' daily rest is taken in a period of 30 hours. The

same interpretation applies to Article 8(1) and (2) of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR). In addition, the Court ruled that the requirements on rest periods that apply to crews consisting of a single driver or of at least two drivers are apparent with sufficient clarity from the wording of Article 8(1) and (2) of Regulation 3820/85 and its context and objectives.

In its ruling of 17 March 2005 (Criminal proceedings against Annic Andréa Raemdonck and Raemdonck-Janssens BVBA), C-128/2004, the Court established that the terms “material or equipment” in Article 13(1)(g) of Council Regulation (EEC) No 3820/85 must (in the context of the exemption scheme provided for in Article 3(2) of Council Regulation (EEC) No 3821/85) be construed as covering not only tools and instruments but also the goods, such as building materials or cables, which are required for the performance of the work involved in the main activity of the driver. As the Court also recalled, the exception applies only provided that driving the vehicle does not constitute the driver's main activity. The driver must, in addition, use the material or equipment in question in the course of his work. Those two conditions therefore relate to the activities of the driver, and not to those of the undertaking concerned.

4.2.5. *Digital tachograph*

Commission Regulation (EC) No 1360/2002 of 13 June 2002 adapting for the seventh time to technical progress Council Regulation (EEC) No 3821/85 on recording equipment in road transport contains, in its Annex 1B, the technical specifications of the digital tachograph introduced by Council Regulation 2135/98.

The digital tachograph became compulsory for all new vehicles in all Member States on 1 May 2006¹⁷. The main objective of introducing the digital tachograph was to harmonise implementation of the Driving Time Regulation as well as to unify and improve enforcement practices throughout the Member States.

The digital tachograph obliges enforcement agencies to update their ways of enforcing the rules and prosecuting offenders. The Commission granted financial support to a project that promoted cooperation among Member States to work out common plans for implementation, to exchange information and to develop harmonised and effective solutions to implementation-related questions. Targeted action was launched to support implementation of the digital tachograph in the ten Member States that acceded to the European Union in 2004.

The provisions regarding the digital tachograph have also been in force in the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) since 16 June 2006, with a transitional period for non-EU AETR Contracting Parties until 16 June 2010. The digital tachograph will thus become obligatory for all European third countries that neighbour the European Economic Area.

¹⁷ Article 29 of Regulation (EC) No 561/2006

4.2.6. *Repeal of Council Regulation No 3820/85*

The new Regulation (EC) No 561/2006¹⁸ entered into force on 11 April 2007, apart from those provisions concerning the digital tachograph, which entered into force on the earlier date of 1st May 2006.

The new Regulation clarifies and updates the 20-year-old legislation. It aims at enhancing road safety, drivers' working conditions and fair competition within Member States. Apart from the improved social and safety conditions, new measures also ensure strict and harmonised enforcement of these rules. The Regulation strengthens provisions on employer liability and prepares the ground for common sanctions in respect of serious infringements. An Advisory Committee was established on 24 May 2007 to promote continued involvement and commitment to the enforcement of the Regulation.

4.2.7. *Repeal of Directive 88/599/EEC*

The new Directive 2006/22/EC¹⁹ entered into force on 1 May 2006. Member States were obliged to transpose the Directive into national legislation by 1 April 2007.

The new Directive increases the required minimum quantity of checks gradually from 1 % to 3 % of total days worked by professional drivers in year 2010. Within this overall percentage, the minimum percentage devoted to roadside checks is raised from 15 % to 30 % and the figure for checks at the premises rises from 25 % to 50 %.

In order to improve the quality of checks, the Directive envisages establishing a coordinating enforcement body within each Member State, adequately equipping the enforcement staff with a basic list of interoperable equipment and ensuring road infrastructure with sufficient lay-bys or service stations to carry out checks.

Cooperation between Member States' enforcement authorities is assured through increased use of concerted actions, better exchange of information through an electronic network and a Regulatory Committee to clarify the implementation of the Directive. Member States nominate a body for intercommunity liaison, which is represented in the Committee. The Regulatory Committee was set up on 9 October 2006. It met on 19 January 2007 and endorsed a uniform sick leave form that replaces 27 different national models and thus efficiently contributes to reducing the administrative burden. The Commission adopted the model by Decision of 12 April 2007 on a form concerning social legislation relating to road transport activities.

4.2.8. *The legislation concerning working time for the road transport sector: Directive 2002/15/EC*

Directive 2002/15/EC²⁰ was due to be implemented into national legislation by 23 March 2005. However, there are Member States which have still not transposed the Directive's provisions fully and which are now the subject of infringement proceedings.

¹⁸ OJ L 102, 11.4.2006, p.1

¹⁹ OJ L 102, 11.4.2006, p.35

²⁰ OJ L 80, 23.3.2002, p.35

The Commission is convinced that the Directive, when implemented in all the Member States, will contribute to improving the social conditions of those persons performing mobile road transport activities and also to enhancing road safety.

The next reporting period 2005-2006 will cover also the implementation of Directive 2002/15/EC.

4.2.9. Conclusions

Effective application of the rules on driving times, breaks and rest periods is in everyone's interest. The Commission encourages all Member States to increase the quantity and quality of checks, undertake concerted checks and cooperative initiatives promoting exchanges of information and personnel. These actions will contribute to enhancement of enforcement activities and will lead to harmonised and better implementation of the Regulation's provisions.

The next reporting obligation will cover the years 2005-2006. It will be the last report under the "old" legislation. At the same time, it will be the first report accompanied by a simultaneous report from the United Nations Economic Commission for Europe on the implementation of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR). In addition, it will be the first report that includes the implementation of the Working Time Directive during the years 2005-2006. It is therefore of the utmost importance that the country reports arrive in due time as set in the Regulation and in the required uniform format. Moreover, information on the implementation of Directive 2002/15/EC will have to be provided by the same date.

The Commission notes that nearly all Member States have provided the minimum level of enforcement of 1 % of days worked by professional drivers. It is important that enforcement authorities make an effort to increase the quantity of checks that, from 1 January 2008, will have to cover 2 % of total number of working days.

The results still give cause for concern, as the average number of offences did not fall over time. In a highly competitive market, in which companies are under pressure to keep costs to a minimum, action must be taken to improve compliance with these essential rules. The Commission is confident that the new legislation will make a positive contribution in this area. It would also point out that industry is keen to ensure that the new working time rules are applied and enforced uniformly and fairly throughout the Union to avoid any distortion of competition.

Only with greater effort and investment on the part of Member States in terms of enforcement activity will there be greater respect for Community social norms in the road transport sector. With this in mind, the Commission will continue to monitor developments in this field to ensure harmonised implementation of social legislation, to encourage good practice and to strengthen levels and effectiveness of enforcement.