



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

**On the implementation in 2001-2002 of Regulation (EEC) 3820/85 on the harmonisation
of certain social legislation relating to road transport
(22nd report from the Commission on the implementation of the social legislation
relating to road transport)**

{SEC(2006)791}

EXECUTIVE SUMMARY

This report is the fifth in the series of Commission reports concerning the implementation of Council Regulation (EEC) No 3820/85. It sets out trends and statistics covering the Member States' inspection and enforcement activities during the period 2001-2002 in relation to the provisions of Regulation (EEC) No 3820/85 on driving time, rest periods and breaks. It is based on the statistics provided by the Member States and includes their views on the implementation of the Regulation.

All Member States submitted data to the Commission for the current period. Unfortunately some Member States did not submit their data within the set deadline. Other Member States still do not break down their total figures and their returns are not uniform. This has delayed the compilation of the report and has also limited an early and effective comparison of the statistics.

Ten Member States increased the number of working days checked at the roadside, namely Denmark, Germany, Spain, France, Ireland, Italy, Luxembourg, Austria, Sweden and the United Kingdom. The other Member States indicated a reduction in the number of working days checked. Generally, the total number of working days checked (national and non-national together) has increased during the years 2001-2002.

Eleven Member States increased the number of roadside checks carried out, namely Denmark, Germany, Spain, France, Ireland, Italy, Luxembourg, Austria, Portugal, Sweden and the United Kingdom. The others showed a reduction. In general, the number of drivers checked at the premises of undertaking has decreased.

All of the Member States easily passed the basic checking standard of 1% of working days of professional drivers, with Germany, Greece, Spain, France, Luxembourg and the United Kingdom exceeding 2 %.

Member States have reported some initiatives taken during the period of this report and subsequently. Concerted checks have been undertaken by Denmark, Norway, Finland and Sweden during the reference period. The Commission notes that **co-operation is still an exceptional event** as most of the Member States appear to be collaborating with each other only occasionally. New Community legislation on working time entered into force on 23 March 2005. A complementary element to the Regulation, this represents a positive development. The Member States are obliged to ensure that the digital tachograph is being installed in all new vehicles at the beginning of 2006.

However, the overall number of offences recorded has continued to rise in several Member States. 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. For every 100 working days checked, European enforcement agencies detect on average 1.69 offences. The Commission would encourage a more targeted approach based on risk assessments, given the limited resources available. It is evident that the current situation cannot be left to deteriorate. Only with a more coherent set of rules plus a greater effort and investment on the part of the Member States in terms of enforcement activity, can there be greater respect for Community social norms in the road transport sector.

1. INTRODUCTION

This report, which covers the period 2001 - 2002, is the fifth in the series of Commission reports, which cover Council Regulation (EEC) No 3820/85¹. It is based on the information supplied by Member States using the standard form introduced according to the Commission Decision of the 22 February 1993².

All Member States have used the standard form for submitting data to the Commission. Their returns are for the most part complete but still not all uniform and some of the data provided were fragmentary or lacking in some aspect. There was a delay in returns, particularly from Ireland, and data from Greece, Luxembourg and Portugal were not complete.

However, the use of the standard form makes it easier for the Commission to analyse and to compare the statistics with those of the last period. This report also sets out any initiatives communicated by the Member States and includes the latest developments at Community level.

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 (national)	- 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	439 090	477 155	231 478	708 633	1.61
Belgium	720 280	555 387	297 911	853 298	1.18
Denmark	209 000	280 595	28 193	308 788	1.48
Finland	270 160	312.310	50 778	363 088	1.34
France	2 500 000	5 999 030	1 176 688	7 175 718	2.87

¹ OJ L 370, 31.12.1985, p. 1.

² OJ L 72, 25.03.1993, p. 33.

Germany	3 470 040	7 691 352	6 858 957	14 550 309	4.19
Greece ³	4 883	34 616	5 512	40 128	8.21
Ireland	585 046	873 123	2 038	875 161	1.49
Italy	2 189 651	4 191 031	130 898	4 321 929	1.97
Luxembourg	81 398	139 567	37 362	176 929	2.17
Netherlands	546 922	541 430	56 666	598 096	1.09
Portugal ⁴	585 077			650 224	1.11
Spain	2 016 000	4 231 802	445 872	4 677 674	2.32
Sweden	440 000	464 456	89 717	554 173	1.25
United Kingdom	2 061 880	3 985 245	183 230	4 168 475	2.02

2.2. Offences: summary

Number of offences recorded: Articles 6, 7, 8 and 14 of Regulation (EEC) 3820/85

Overview by Member States

Member State	PASSENGERS				GOODS				Total
	Nationals	EEC	Third Count.	Total non-nationals	Nationals	EEC	Third Countries	Total non-nationals	
Austria	2 277	1 134	1 123	2 257	26 536	9 772	6 479	16 251	47 321
Belgium	125	84	19	103	2284	3219	424	3643	6155
Denmark	150	2		2	2 632	27		27	2 811
Finland	671		3	3	12 968	10	111	121	13 763
France	118 840	20 331		20 331					139 171
Germany	20 626	2 256	2 226	4 482	609 534	91 316	54 575	145 891	780 533
Greece *									

³ According to Commission calculations, the minimum number of working days to be checked (a) should be 9766.40 and by consequence, Greece attained an enforcement level of 4.1%.

⁴ Only a global statistic was forthcoming for this exercise.

Ireland	229	66		66	6 930	177			7 579
Italy	8 903	177	5	182	43 562	396	21	417	53 064
Luxembourg	2	18	0	18	246	137	5	142	408
Netherlands	2315	16	7	23	5 634	950	250	1 200	9 172
Portugal *									
Spain	2 360	132	93	225	34 513	2 831	251	3 082	40 180
Sweden	732	180	14	194	2 593	597	67	664	4 183
United Kingdom	2 649	18	27	45	32 055	4 536	1025	5 561	40 310

*Data not provided by the MS

Number of offences recorded: Articles 6, 7, 8 and 14 of Regulation (EEC) 3820/85

Overview by category of offences (includes passengers and goods, nationals, EEC and third countries)

Article	Type of offence	Number of offences
6	Driving periods	425 327
7	Breaks	333 401
8	Rest periods	416 783
14	Service timetable and duty roster	7 868
Total		1.183 379

3. RELATIONS AND CO-OPERATION BETWEEN MEMBER STATES

Some Member States showed good example by reporting on concerted checks.

Sweden conducted concerted checks with Denmark, Norway and Finland.

In the roadside inspection area of Kundl (Tyrol), the German police, equipped with Austrian authorisation for checking vehicles on road in Austria, have worked together with their Austrian counterparts.

4. CONCLUSIONS AND COMMENTS

4.1. Proposals from the Member States

Germany proposes a new standard reporting form. It recommends inclusion of the following details:

1. A comparison between the target and the actual numbers based on the above form or similar. At present the rate of compliance can only be determined through additional calculations.
2. Infringements of Directive (EEC) 3821/85. Such offences are often in conjunction with those against Regulation (EEC) No 3820/85 and are therefore no less important.
3. An overview of the exchange of information stipulated in Article 17 of Directive (EEC) 3820/85 and the cooperation between Member States on checks agreed under Article 5 of Directive 88/599/EEC. The fact that not all Member States appear to comply with this provision is unsatisfactory and this should therefore be taken into consideration by the Commission during its monitoring operations.
4. Following the inclusion of both Regulation (EEC) No 3820/85 and Directive 88/599/EEC in the EEA Agreement (OJ L 1, 3 January 1994, p. 433), these regulations therefore also apply to the non-EU Contracting Parties to the European Economic Area. The 1993 standard reporting form does not allow for this as it only distinguishes between the then EEC Member States and third countries. Consequently, the other EEA States have to be included in the column for third countries, although they should be treated as EU (EEC) Member States since the relevant regulations have been incorporated into the EEA Agreement.

The Commission intends to address this issue within the framework of the Committee to be set up under the new Regulation.

4.2. Conclusions and comments by the Commission

The legislation in force continues to provide a common Community standard for setting maximum driving times and rest periods for road transport operators. Its implementation within the Member States plays a vital role in enhancing road safety and fair competition within the Union.

However the Commission is aware that Member States 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. Furthermore, infringements are penalised with differing degrees of severity. Some of the information provided by the Member States is often not coherent and it can therefore be quite difficult to make accurate comparisons. The Commission also recognises the need for enhanced co-operation between Member States to ensure the harmonised enforcement.

For these reasons it has proposed three measures to address these problems: firstly the revision of the Regulation to simplify, clarify and update the rules; secondly, more recently, a revision of the enforcement Directive 88/599/EEC to enhance the quantity and quality of enforcement activities, encourage better cooperation between enforcement agencies both within and between Member States and clarify enforcement priorities. Finally it is pressing ahead to ensure the introduction of a digital tachograph to minimise fraud and facilitate fast, accurate and detailed data recording, storage and checks.

4.2.1. More information provided and less incomplete data but the problem still persists

All Member States provided information for the present report period using the standard form and most of the Member States managed to provide more detailed data. However, the lack of timely reporting to the Commission hinders a comprehensive comparison and delays the finalising of the report. The non-standard figures that eventually were received also hinder a comprehensive comparison between the Member States. In addition, Denmark did not supply the Commission with its data concerning the number of drivers checked at premises of undertakings. Greece did not provide data concerning offences. Belgium did not aggregate their data. France still distinguishes between residents and non-residents instead of nationals and non-nationals, which makes a comparison with the other Member States' statistics difficult. Member States are reminded that the Regulation⁵ not only imposes a specific duty to provide this information but also fixes a time limit for sending it to the Commission of 30th September in the year following the expiry of the relevant two year period.

4.2.2. The minimum standard of checks has been reached by all Member States

Compared with the period of the last report (1999-2000)⁶ six Member States recorded an increase in the number of checks, namely Germany, France, the Netherlands, Luxembourg, Austria and the United Kingdom.

In general, all of the Member States easily passed the basic standard of 1 %. Germany, Spain and France continued to be over 2 %. The number of offences against driving periods and rest periods increased while all other offences decreased

Only in Italy, Ireland, the Netherlands and Sweden has there been a fall in the number of offences against Article 6 (driving periods). The total number of offences relating to rest periods increased compared to the last period. Meanwhile, those offences recorded against breaks decreased in comparison with the last period (especially in the case of Austria, Finland, Sweden). A reduction was also noticeable in terms of the number of offences detected concerning Article 14 regarding the service timetable and duty roster.

Most Member States have provided sufficient data regarding the infringements for the relevant period. Data submitted by the United Kingdom continued to reflect a

⁵ Article 16(2)

⁶ COM(2004) 360 final of 30.4.2004

difficulty in allocating figures between offences for driving periods, rest periods or breaks offences.

4.2.3. In several Member States the number of offences recorded has increased

In some Member States the total number of offences for the present period has increased, e.g. in Germany, Austria and the United Kingdom. This increase may reflect many different factors: a real increase in the number of offences committed, a more targeted effort on the part of the enforcement authorities, or a better collection of statistics. Linked with this is the fact that in Denmark, Germany, Spain, France, Luxembourg, Netherlands and United Kingdom the total number of working days checked rose, while for Belgium, Ireland, Italy, Austria, Finland and Sweden total number of working days checked has decreased.

In general, even though several Member States report an increase, there appears only a small rise in the total number of offences detected throughout the EU. In the period 1999-2000 a total of 1,173.122 offences were recorded and for the period 2000-2001 a total of 1.180.334.

An intensification or reduction in the number of checks does not automatically lead to a corresponding rise or fall in the number of offences detected. While this relationship may in some instances reflect the deterrent effect of more frequent enforcement activities, it is evident that for many Member States, increased enforcement activity simply highlights a growing problem.

4.2.4. Success rate in detecting offences vary widely

The ratio of the total number of infringements detected to the total number of working days checked reveals a wide disparity in the success of Member States in targeting potential offenders. During 2001-2002, Austria, Germany and Finland were the most successful with an average of 6.67, 5.36 and 3.79 offences detected per 100 working days checked in the relevant period. In some Member States the detection level was over 1 offence (France, Italy, Netherlands) per 100 working days checked, but other Member States did not attain this rate.

This disparity in ratios may indicate the potential benefits to be gained by an exchange of experience and best practice between Member States and adoption of the most effective and nationally appropriate practice throughout the Union.

4.2.5. Interpretation of Council Regulations (EEC) No 3820/85 and 3821/85 through rulings made by the Court of Justice of the European Communities. The period covered is 2001-2002

There have been no rulings regarding Council Regulations (EEC) No 3820/85 and 3821/85 made by the Court of Justice of the European Communities during the period 1 January 2001 to 31 December 2002.

4.2.6. Implementation of the Digital tachograph

The Commission adopted Regulation (EC) No 1360/2002 on 13 June 2002 adapting for the seventh time Council Regulation (EEC) No 3821/85 on recording equipment

in road transport. The Commission Regulation contains the technical specifications, in its annex 1B, of the digital tachograph introduced by Council Regulation (EC) No 2135/98. Under the current provisions, the digital tachograph was planned to become compulsory for all new vehicles in all Member States after 5 August 2004. However as type-approved digital tachographs were not available to the vehicle manufacturers at the target date of 5 August 2003, the introduction deadline was postponed to 5 August 2005 with a tolerance period until 1 January 2006. This has been extended to May 2006, to take account of the new provisions set out in the recent agreement on the new road transport social legislation.

The main objective in introducing the digital tachograph is to improve enforcement. It will also prove an important stimulus to fostering a level playing field by promoting harmonised implementation of the Regulation and a common approach to enforcement practice. The digital tachograph will oblige enforcement agencies to considerably update their ways of enforcing the rules and prosecuting offenders. In this respect a project, supported by the Commission, is under way. The project allows Member States to work out common plans for implementation, possibilities to exchange information and to develop harmonised and more effective solutions. The resulting enhancement in enforcement of the driver's hours rules will provide a significant contribution to road safety, driver's working conditions and fair competition. The project delivered its final report in October 2004 and a follow-up action lasting from 2005 to 2008 has been launched to support implementation in the new Member States and carry out training and communication activities (e.g., website, helpdesk).

4.2.7. Revision of Council Regulation (EEC) No 3820/85

In the White Paper on European Transport Policy for 2010: time to decide (COM (2001) 370), the Commission stated the following: "EU regulations on road transport, particularly on working conditions, are not only insufficient; they are also, and above all, extremely poorly enforced. This laxity in enforcing the regulations creates problems. Consequently, the effectiveness of Community and national legislation depends on correct, impartial application throughout the Community." To improve the situation the Commission intends to promote efficient, uniform interpretation, implementation and monitoring of Community road transport legislation. Uniform interpretation was addressed by the proposal for a new Regulation⁷. The primary aim of the proposal was to simplify, clarify and update the Regulation: The proposal strengthens provisions on employer liability, introduces extraterritoriality for roadside inspectors and impoundment of the vehicle as a common sanction for serious infringements. An advisory committee is established comprising representatives of national enforcement agencies to promote continued involvement and commitment to the enforcement of the Regulation. The new Regulation was finally agreed on 2 February 2006 by the European Parliament and the Council and will enter into force 20 days after its publication (expected May 2006). Its provisions will be applicable after one year, apart from those concerning the digital tachograph which are immediately applicable.

⁷ COM (2001) 573 final of 12 October 2001

4.2.8. *Revision of Directive 88/599/EEC*

The Commission also aimed at improving enforcement, effectiveness and uniformity of checks and sanctions with its proposal to revise Directive 88/599/EEC⁸. Its three aims were to raise the quantity and quality of checks, encourage greater co-operation between enforcement authorities and address the issue of harmonisation of sanctions:

In terms of increased quantity of checks the minimum percentage of checks is raised from 1% to 3% of total days worked by professional drivers; within this overall percentage, the minimum percentage devoted to roadside checks is raised from 15% to 25% and that for checks at the premises from 25% to 50%.

In terms of increased quality, the proposal envisaged: one lead co-ordinating enforcement body within each Member State, which develops, publishes and implements an enforcement strategy; enforcement staff sufficiently equipped with a basic list of interoperable equipment and trained in cooperation with other Member State forces; a road infrastructure with sufficient lay-bys or service stations to carry out checks. Both random and targeted checks are to be carried out using a common risk rating system

Co-operation between Member States enforcement authorities is assured through increased use of concerted actions, better exchange of information through an electronic network, and a standing committee of enforcement authorities to clarify the implementation of the Directive, encourage a coherent approach and facilitate dialogue between industry and the agencies.

In terms of sanctions, the proposal ensured that Member States include and use within their range of sanctions, temporary immobilisation, withdrawal, suspension or restriction of operator licence or driving licence, all to be used effectively, proportionately and dissuasively. The proposal also advocates inclusion of proportionate financial sanctions for the whole transport chain should offences lead to financial gain. Finally it contains a list of offences to be commonly recognised as serious and which should therefore attract an appropriate penalty.

The provisions of the new Directive were finally agreed between the Council and European Parliament on 2 February 2006. It will enter into force 20 days after the date of publication (May 2006), and Member States have until 30 April 2007 to transpose it.

4.2.9. *The introduction of working time for the road transport sector: European Parliament and Council Directive 2002/15/EC*

Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities was adopted on 11 March 2002. The implementation of this Directive as well as of the general Working Time Directive 2003/88/EC for the road sector requires the transposition into national law of the Member States. The transposition date of the sectoral directive 2002/15/EC was 23 March 2005. Two Member States,

⁸ COM (2003) 628 final of 21 October 2003

Finland and Spain, lodged a joint case before the European Court of Justice to annul part or the entire sector-specific Directive. The Court ruled against them on 4 September 2004.

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

4.2.10. Summary comments

Effective application of the rules on driving times and rest periods is in everyone's interest. The Commission continues to encourage all the Member States to increase the quantity and quality of checks and strengthen enforcement in all the Member States, as well as to undertake co-operative initiatives promoting exchanges of information and personnel and undertake joint exercises. These actions will contribute to an enhancement of enforcement activities and will lead to a better common understanding of the implementation of the Regulation.

Member States are reminded that the Regulation not only imposes a specific duty to provide this information but also fixes a time limit for sending it to the Commission of 30th September in the year following the expiry of the relevant two year period.

The Commission is encouraged that all Member States have provided the minimum level of enforcement of 1% of days worked by professional drivers. Moreover for the first time all provided the data within the standard format. However the results give cause for concern. There are too many offences and, in comparison with previous reports, the number continues to grow. 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.

For this reason the Commission considers as crucial the two proposals, now an agreed set of legislative measures, to simplify, clarify and update the basic rules and enhance enforcement activity. It would also point out that industry will be 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. It also expects Member States to have put the necessary measures in place to introduce the digital tachograph to facilitate a tamperproof, long-term storage of data as well as quick, accurate downloading and checking of data.

Only with a more coherent set of rules, plus a greater effort and investment on the part of the Member States in terms of enforcement activity, can 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 in all the Member States to ensure a harmonised implementation of social legislation, to encourage good practice and to strengthen levels and effectiveness of enforcement.