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REPORT FROM THE COMMISSION

**on the implementation in 2005-2006 of Regulation (EEC) No 3820/85 on the
harmonisation of certain social legislation relating to road transport**

**(24th report from the Commission on the implementation of the social legislation
relating to road transport)**

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(24th report from the Commission on the implementation of the social legislation relating to road transport)

EXECUTIVE SUMMARY

This Commission report concerns the implementation of Council Regulation (EEC) No 3820/85¹ on the harmonization of certain social legislation relating to road transport. The Regulation provides for maximum driving times and minimum break and rest periods for professional drivers as well as for control procedures. Under the accompanying Directive 88/599/EEC² on standard checking procedures, 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.

Despite the reporting obligation, some Member States were seriously delayed in submitting their data. In order not to delay the next report, it is very important that the Member States' reports covering the years 2007-2008 reach the Commission by 30 September 2009. These reports will also have to include information on implementation of the Working Time Directive 2002/15/EC³ on the organisation of the working time of mobile workers in road transport 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.

Austria, France, Italy and Spain increased during the reporting period the total number of working days checked. The average total number of working days checked (national and non-national together) remained more or less the same during the period 2005-2006 at around 2.4 million, compared to an average of about 2.3 million working days checked in the previous reporting period.

Apart from Cyprus, Estonia, Ireland, Netherlands, Portugal and Sweden all Member States exceeded the obligatory mark of 1% of all working days to be checked, with Austria, France, Germany, Italy, Poland and Spain exceeding the 2% mark, which comes into effect as obligatory threshold on 1 January 2008. Switzerland also passed the threshold.

The total number of offences detected on the EU territory and reported to the Commission decreased slightly, although it has increased in a few Member States. Compared to the

¹ Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport, OJ L370, 31.12.1985, p. 1

² Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to Road transport and Regulation (EEC) 3821/85 on recording equipment in road transport, OJ L 325, 29.11.1988, p.5

³ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of working time of persons performing mobile road transport activities, OJ L 80, 23.3.2002, p. 35

previous reporting period, the number of detected offences in respect of breaks and rest periods decreased as well as the number of offences concerning driving periods, whereas there was an increase concerning service timetables and duty rosters. The most frequent infringements concerned Article 7 of the Regulation (breaks), with 425195 infringements detected. In the previous reporting period, the highest number of infringements detected concerned Article 8 of the Regulation (rest periods; 435849).

The effects of the new Regulation (EC) No 561/2006⁴ on driving time and rest periods and its implementing Directive 2006/22/EC⁵ on minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85, in force since 11 April 2007 and 1 May 2006, could not yet be measured during the reporting period. However, it is expected that these new rules will make enforcement of social legislation easier. They provide for a targeted approach, based on risk assessments, reinforce cooperation between Member States and give the Commission implementing powers, especially with regard to minimum standards for roadside checks and checks at premises, standard equipment of enforcement units and which matters of fact are to be regarded as infringements. These powers are executed with the assistance of a regulatory committee. An increased focus has to be set on efficient and harmonised implementation of the improved set of social rules.

1. INTRODUCTION

This report, covering the two-year period of 2005-2006, is based upon the information of the Member States using the standard form introduced in accordance with the Commission Decision of 22 February 1993⁶.

The returns were mostly complete, but there were gaps in the quality of reports. For instance Greece did not submit data concerning offences. Some Member States, such as Slovenia or the Czech Republic only submitted reports for parts of the reporting period. Some varied from the reporting format by not distinguishing properly between the three different groups of drivers to be controlled (nationals, other Member States, third countries).

For the first time, the Member States that acceded in 2004, had to submit their reports for 2005-2006. Romania and Bulgaria, having become Member States of the European Union as from 1 January 2007 and therefore after the end of the reporting period, did not have to submit national reports. However, Romania submitted a complete report, covering the full period.

Switzerland also submitted its data to the Commission.

⁴ 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

⁵ 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) 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

⁶ Commission Decision of 22 February drawing up a standard reporting form provided for in Article 6 of Council Directive 88/599/EEC concerning road transport, OJ L 72, 25.3.1993, p. 33

2. SUMMARY TABLES

2.1. Checks: summary

The table below shows the number of days actually checked as a proportion of the minimum number of working days to be checked during the reporting period (1 January 2005 – 31 December 2006).

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	470736	875914	510678	1386592	2.95
Belgium	726000	965414	152065	1117479	1.54
Cyprus	77589	4738		4738	0.06
Czech Republic ⁷	265491	1159843	219308	1379151	(5.19)
Denmark	220000	284455	27985	312440	1.42
Estonia	61160	37189	2290	39479	0.65
Finland	334000	379920	79033	458953	1.37
France ⁸	2505000	8958405	2073646	11032051	4.4
Germany	5717462	7571798	5586304	13158102	2.3
Greece	6402	29646	917	30563	(4.77)
Hungary	560000	639530	132494	772024	1.37
Ireland	904700	632710	89	632799	0.70
Italy	3268176	7441167	934095	8375262	2.56
Latvia	305662	485697	73915	559612	1.83
Lithuania	251660	237567	78807	316374	1.26
Luxembourg	51201	72091	15923	88014	1.72
Malta	103	1001	65	1066	(10.34)
Netherlands	595405	471571	59831	531402	0.89
Poland	1286126	5063096	3479674	8542770	6.64
Portugal	585 077 ⁹	99613	518	100131	0.17
Romania	410106	428043	72680	500723	1.22
Slovakia	164027	202278	1519	203797	1.24
Slovenia ⁷	80000			81059	(1.01)
Spain	1912819	4138122	438912	4577034	2.39
Sweden	528000	414891	96227	511118	0.97
United Kingdom	2254506	3157534	484546	3642080	1.62
Switzerland	412040	1646858	331930	1978788	4.80

⁷ The report only covers the year 2006

⁸ France does not distinguish between nationals and non-nationals and between other Member States and third countries, but between residents and non-residents. In the table, residents appear as nationals and non-residents as non nationals

⁹ Member State did not submit data; the number is therefore taken from the previous reporting period

The table shows that most Member States succeeded in meeting the goal of 1% of all working days to be controlled. The exceptions were Cyprus (0.06), Estonia (0.65), Ireland (0.70), Netherlands (0.89), Portugal (0.17) and Sweden (0.97).

Slovenia's report only covers the year 2006 and there is no differentiation between nationals and non-nationals in terms of working days checked. This makes it impossible to draw any conclusions about the balance of checks between those groups.

Figures suggest that some of the data have been inconsistently reported. In the case of Greece it is unlikely that only 1345 vehicles should be subject to Regulation (EEC) No. 3820/85 on the harmonisation of certain social legislation relating to road transport, given that 3997 certified copies of Community licences have been reported by Greece in the context of Regulation (EEC) No 881/92¹⁰ concerning access to the road transport market.

A similar comment applies to Malta, where the number of certified copies of Community licences exceeds to a similar extent the number of vehicles subjected to the Regulation, thus leading to a minimum number of working days to be checked of only 103.

In the case of the Czech Republic, the number of controls reported to have been carried out is particularly high in comparison to the two-year figure of countries of similar characteristics, such as Austria or Hungary, even though the Czech report only covers the year 2006. Pending further verification of these figures, the arithmetically calculated performance ratio is not further taken into consideration.

A report submitted earlier about the years 2004-2005 could not be taken into account due to the fact that it could not be clearly distinguished, which controls were carried out in 2004 (and would therefore not fall under the reporting period) and because of the lack of a calculation of minimum checks to be carried out.

In all these reports, the calculated ratio is being put in brackets and will not be taken into further consideration.

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	1425	1305	835	2140	28249	13351	4309	17660	49474
Belgium ¹¹	254	252	19	271	2099	6643	561	7204	9828

¹⁰ Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, OJ L 95, 9. 4. 1992, p. 1

¹¹ The data reported by police and social inspectors have not been incorporated into the Table above, as they were not suitably disaggregated

Cyprus	248				337				585
Member State	Passengers				Goods				Total
	Nationals	EU countries	Third countries	Total non-nationals	Nationals	EU countries	Third countries	Total non-nationals	
Czech Republic	1005	88	13	101	5894	1779	256	2035	9035
Denmark	120				3279				3399
Estonia	12	2	0	2	261	55	5	60	335
Finland	921	0	0	0	11548	18	23	41	12510
France ¹²	106213	24989		24989					131202
Germany	19403	810	568	1378	631815	45832	7448	53280	705516
Greece ¹³									
Hungary	288	67	163	230	6795	2250	2679	4929	12242
Ireland	192	4		4	8495	37		37	8728
Italy	10090	1777	222	1999	66626	4127	793	4920	83635
Latvia	12	1	0	1	322	34	0	6	341
Lithuania	120	73	77	150	568	292	457	749	1587
Luxembourg	12	0	0	0	68	99	0	99	179
Malta ¹³						3			3
Netherlands	424	134	21	155	8311	2412	190	2602	11492
Poland	13671	968	257	1225	47536	25557	7307	32864	95296
Portugal	56	18	0	18	517	16	0	16	607
Romania	8842	0	400	400	30286	0	2948	2948	42476
Slovakia	2128	54	1	55	33640	1506	202	1708	37531
Slovenia									1006
Spain	4913	448	493	941	73007	5907	1566	7473	86334
Sweden	818	104	11	115	3831	926	47	973	5737
United Kingdom	2777	201	16	217	29142	15664	1305	16969	49105
Switzerland					7592	7251	70	7321	14913

Overview by category of offence

Article	Type of offence	Number of offences
6	Driving periods	297244
7	Breaks	425195
8	Rest periods	241365
14	Service timetable and duty roster	52951
Total		1016755

The Belgian report reveals that the total number of nationals checked at the roadside amounted to 35761, 59264 checks concerned non-nationals in Belgium. This led to an almost equal number of offences recorded for passenger transport operations for nationals and non-

¹² Figures are for transport of goods and transport of passengers

¹³ Member State did not submit data

nationals. Concerning transport of goods, the number of offences by non-nationals exceeded the number of offences by nationals by more than three times.

A similar comment applies to Lithuania. While the number of checks concerning nationals is higher than the one of non-nationals, the number of offences detected is almost the same for nationals and non-nationals as far as transport of passengers is concerned. Regarding transport of goods, the number of offences detected during controls of non-nationals significantly exceeds the one related to nationals. In Luxembourg, the total number of non-nationals checked at the roadside outnumbers the one of nationals more than twice.

In Slovenia too, the total number of non-nationals checked at the roadside exceeds the one of nationals substantially.

As far as the Czech Republic is concerned, the number of offences detected is particularly low especially in the light of the extraordinarily high number of working days reported to be checked.

In respect to the split of the controls of nationals and non-nationals it has to be reminded that the controls have to be carried out in a non-discriminatory manner.

3. RELATION AND COOPERATION BETWEEN MEMBER STATES

According to Article 5 (1) of Directive 88/599/EEC on standard checking procedures they were to undertake concerted actions at least twice a year. Under Article 5 of Directive 2006/22/EC on minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 this minimum number of concerted checks increases to six times per year from 2007 onwards.

However, only Austria explicitly reported to have taken part in cross-border checks. These controls were coordinated by Euro Control Route (ECR). Concerted controls were carried out together with the German Federal Office for the Transport of Goods (Bundesamt für Güterverkehr –BAG).

4. COMMENTS AND CONCLUSIONS

4.1. Proposals from Member States

No proposals were made by the Member States in their national reports.

4.2. Comments

Although the provisions relating to driving times and rest periods have been in force now for almost thirty years, there is still some difference in the performance of Member States enforcing them. This is detrimental to the goals of enhancing road safety and fair competition, and improving drivers' working conditions.

On 11 April 2007 and 1 May 2006 respectively, the new legal provisions of Regulation (EC) No. 561/2006 on driving time and rest periods and Directive 2006/22/EC on minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85, have entered into force. However, with the digital tachograph being compulsory since May

2006 for new vehicles, the enforceability of the rules on driving time and rest periods has substantially improved. This might be one of the reasons for the slight decrease of the total number of offences reported.

Further improvement is being expected from the new provisions that entered into force in 2006 and 2007.

4.2.1. Data Submission

The lack of punctuality in the provision of information by some Member States to the Commission hinders the compilation of the report at an early stage. In addition, the submission of data diverting from the standard reporting format or incomplete data additionally hampers a comprehensive comparison between countries.

Specific questions related to the accuracy and plausibility of data, as described in detail in chapters 2.1 and 2.2, should be addressed by the Member States concerned.

The Member States are reminded, that the submission of complete reports according to the standard reporting format is an obligation for the Member States stemming from Regulation (EEC) No. 3820/85.

A new reporting format was introduced in order to take account of the developments in the Community rules on driving times and rest periods. The new reporting requirements established by a Commission Decision of 22 September 2008¹⁴, based upon Regulation (EC) No 561/2006 on driving times and rest periods and Directive 2006/22/EC on minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) no 3821/85 cover in particular information on national exceptions granted by Member States under Article 13(1) of Regulation (EC) 561/2006 and more precise details of checks undertaken on vehicles. In addition, a reporting format on the implementation of Directive 2002/15/EC is also provided for.

4.2.2. Checks

Most Member States remained more or less stable in their number of checks.

Austria, Italy, France and Spain increased the number of their checks, whereas Luxembourg and Germany indicated a decrease around 3%. In the previous reporting period, Germany checked 5.06% of all working days, whereas during the current reporting period only 2.3% were checked. In Luxembourg, the percentage of working days checked decreased from 4% in 2003-2004 to 1.72% during the current reporting period. While Luxembourg did not deliver any explanation in its report, Germany indicated that the number of vehicles falling under the scope of Regulation (EEC) No. 3820/85 and therefore the number of minimum controls had almost doubled since the last reporting period.

Almost all Member States passed the basic standard of 1 % of working days checked, with Austria, France, Germany, Italy, Poland and Spain exceeding the 2% mark.

¹⁴ Commission Decision of 22.IX.2008 drawing up the standard reporting form referred to in Article 17 of Regulation (EC) No 561/2006, (C(2008)5123 final)

However, a number of Member States did not comply with the legal provisions as regards the minimum number of working days to be checked.

The fewest checks were carried out by Cyprus (0.06%), Portugal (0.17%), Estonia (0.65%), Ireland (0.70%), the Netherlands (0.89%) and Sweden (0.97%). Taking into account the previous reporting period, these Member States are called upon to urgently take the necessary corrective measures. Portugal and Sweden failed to comply with their control obligations for the second time in a row (2003-2004: 0.21% and 0.98% respectively). The Netherlands, having passed the 1%-mark in the previous reporting period, reported a serious fallback. Given the weak performance of the countries mentioned, it is to be expected that they will face serious difficulties in meeting the new 2%-mark, valid as of 1 January 2008, as foreseen by Directive 2006/22/EC on minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

4.2.3. *Offences*

All in all it can be said, that there has been a decrease in the total of offences detected, even though the new Member States had to submit their reports for the first time¹⁵.

The data analysed show that there has been an increase in offences detected in the following Member states: Austria, Netherlands, Spain and the United Kingdom. Whereas for example in Austria and the United Kingdom, also the total number of checks increased, that number had decreased concerning the Netherlands. In case of Spain the number of offences detected almost doubled, whereas the total number of working days controlled only increased by a bit less than one fifth in the EU and Switzerland.

With most Member States reporting a decrease of the number of offences detected, also the total number of offences detected decreased as well. Whereas in 2003-2004 Member States reported a total of 1185395, the total for 2005-2006 amounts to 1016755 (Switzerland reported 14913), even though the regional scope of Regulation (EEC) 3820/85 had increased by the accession of 10 new Member States in 2004. A possible reason for this development may be the first positive effects of the introduction of the new digital tachograph, which enables a better enforcement and compliance with the social legislation in the road transport sector.

It is difficult to review the development between the years 2005 and 2006, as many Member States did not split up their reports, as this is not mandatory.

The most frequent infringement concerned breaks, which constituted 41.81% of the offences detected. In the previous period, only 36.36% of the offences detected related to breaks. In 2003-2004, rest periods had the highest proportion among the offences detected (36.76%).

The likeliness of detecting an offence during a control of working days was the highest in Slovakia (18.41), Romania (8.48) and Germany (5.36), whereas the risk of detecting was particularly low in Latvia (0.06), Lithuania (0.5) and Portugal (0.61).

¹⁵ The quality of the data from most Member States is sufficient. Greece – just like for the period 2003-2004 - did not submit any data. Denmark submitted incomplete data concerning non-nationals. In the case of Slovenia there was no clear separation between nationals, EU Member States and third countries within the sectors of passenger and goods transport

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

Since the last report there have been three judgements of the ECJ relating to Regulation (EEC) 3820/85. The first one was case C-372/03 of 15 September 2005 (Commission of the European Communities v Federal Republic of Germany). The question put to Court concerned the fact that Germany allegedly was in breach of Article 5 (1)(b) of Regulation 3820/85 by issuing driving licences for vehicles in categories C1 or C1+E to drivers aged less than 18.

The Court declared that neither Directive 91/439 on driving licences nor Regulation No 3280/85 on the harmonisation of certain social legislation relating to road transport provided for the possibility of derogating from the minimum age of 18 years for the issue of driving licences for vehicles in categories C1 and C1+E.

In another case, C-93/05 (Teemu Hakala v Oy L. Simons Transport Ab) concerning Article 10 of Regulation 3820/85 the Court concluded that a pay scheme based on distances covered is contrary to that provision, unless such a scheme is of a kind as not to endanger road safety. It is for the national court to ascertain, in view of all the circumstances of the case in the main proceedings, whether that is the case.

In case C-128/04 of 17 March 2005 (Raemdonck and Raemdonck Janssens) the Court of Justice ruled that the terms 'material or equipment' in Article 13(1)(g) of Regulation No 3820/85 on the harmonisation of certain social legislation relating to road transport must 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 of the vehicle concerned. Such an activity, which for the purposes of Article 13 (1) (g) cannot consist of driving the vehicle, must constitute the main activity of that driver and not that of the undertaking concerned.

4.2.5. *Amendments to the legislation*

A new Regulation (EC) No 561/2006 on driving times and rest periods 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. This 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, the 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.

The new Directive 2006/22/EC on minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85, repealing Directive 88/599/EC, entered into force on 1 May 2006 with a transposition deadline of 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 2010. Within this overall percentage, the minimum percentage devoted to roadside checks is changed from 15 % to 30 % and the figure for checks at the premises rises from 25 % to 50 %.

4.2.6. *Conclusions*

During the reporting period, a slight decrease of the number of offences was observed. Whereas the total number of offences detected in the previous reporting period amounted to 1185395, the total number of infringements detected in 2005-2006 was 1016755. The next report will show, whether this evaluation is a sustainable trend. In the next report, the positive effects of the new legislation, especially of the digital tachograph, should be fully measurable.

With 425195 infringements recorded, or 41.81% of all offences detected, the respect of breaks is the most critical point. During the last reporting period, the biggest point of concern was the respect of rest periods.

An effective application of the rules on driving times, breaks and rest periods is of utmost importance. The Commission therefore requests all those Member States who do not yet comply with the new provisions on increased intensity of checks, to increase the quantity of checks. Furthermore, an increase of the number of concerted checks and cooperative initiatives promoting exchanges of information and personnel between the Member States is mandatory. These actions will contribute to enhancement of enforcement activities and will lead to harmonised and better implementation of the Regulation's provisions.

The next report will cover the reporting period 2007-2008. It will be the first report under the new Regulation (EEC) No. 561/2006 on driving times and rest periods. Member States are requested to ensure that the reports are submitted at the latest by 30 September 2009.

Not all Member States reached the stipulated minimum level of control of the days worked by drivers. Given that the majority of Member States, who complied with their legal obligation, just passed the threshold, the Commission recommends to Member States to increase their efforts, as the legally required quantity of checks is set to practically triple to 3% by 2010.

For the sake of fair competition, equal social standards and road safety it is indispensable that all Member States comply with the provisions concerning the number of checks.