



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2003  
COM(2003) 628 final

2003/0255 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### A. INTRODUCTION

1. This proposal abrogates Directive 88/599/EC<sup>1</sup> and replaces it with a new set of rules. It follows on from the Commission's White Paper on European transport policy for 2010: time to decide<sup>2</sup>, in which the Commission indicated that it would tighten up on checks and penalties. The Commission White Paper specified four measures to be taken – promotion of efficient, uniform interpretation, implementation and monitoring of Community road transport legislation; harmonisation of penalties and conditions for immobilising vehicles; increased checks; furthering systematic exchanges of information. The first element was addressed in the Commission's proposal to amend Regulation (EEC) 3820/85<sup>3</sup>; the remaining measures are dealt with in this proposal.
2. The proposal also responds to the generally perceived view – expressed consistently by the European Parliament<sup>4</sup>, in Transport Council Resolutions<sup>5</sup> and through statements from road transport social partners meeting at European level – that an improvement in enforcement of Community law concerning road transport operations within the Union is imperative.
3. Much has changed for road transport within the Union since the current 1988 Directive was introduced. First, there has been the creation of the single market and the consequent liberalisation of the road transport sector. Secondly there has been the liberalisation of cabotage within the Union with effect from July 1998. Thirdly there has been a significant increase in trade with Central and Eastern European countries as a result of the Union's pre-accession strategy. These factors have led to a considerable increase in intra-Community transport and a sharpening of competition between Community hauliers as well as between Community and third country hauliers. The temptation for some operators to gain a competitive advantage by not observing the rules on driving times, breaks or rest periods, as set out in Regulation (EEC) 3820/85, has become stronger.
4. At the same time over the past decade, the Community biennial reports<sup>6</sup> on the implementation of Regulation (EEC) 3820/85<sup>7</sup> have recorded a rise in enforcement activity as well as a considerable increase in the number of offences detected. In terms of roadside checks, it has been calculated that at least 50% of all infringements thus detected concern these social rules.

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<sup>1</sup> OJ L 325, 29.11.1988, p. 55.

<sup>2</sup> COM(2001) 370 final.

<sup>3</sup> COM(2001) 573 final.

<sup>4</sup> Grosch report A4-0032/99 on transport policy and the harmonisation of social legislation.

<sup>5</sup> Council Resolution 85/C 348/01 of 20 December 1985 to improve the implementation of the social Regulations in road transport; Council Resolution 94/C 309/03 of 24 October 1994 on road freight transport in the Single European Market.

<sup>6</sup> COM(1993) 494 final; COM(1995) 713 final; COM(1997) 698 final; COM(2000) 84 final; COM(2001) 767 final

<sup>7</sup> OJ L 370, 31.12.1985, p. 1

5. The road safety implications of professional driver fatigue as a result of excessive working or driving time and minimal rest periods have been well documented in research<sup>8</sup>. A Commission-financed study<sup>9</sup> into professional drivers, both long-haul and short distance, passenger and goods, in Austria, Germany, France and Italy found, for example, that 23% of all drivers admitted to falling asleep at the wheel in the course of their work, if they worked between 40 and 50 hours; this figure doubled to 45%, if the driver worked 50-60 hours<sup>10</sup>. With the increasing night-time use of roads to avoid daytime congestion, the study found through interviews with drivers that 74% of those who drove for four nights or more admitted to having fallen asleep at the wheel over six times in the previous year<sup>11</sup>. Moreover it is a fact that most accidents happen in the early hours of the morning. These disturbing statistics underline the need for the Community to address the issue of enforcement seriously, and for Member States to fulfil their responsibilities to their citizens. While new technologies are emerging to help the driver to regulate his driving activities safely, in the meantime further action on enforcement is needed.
6. By Regulation (EC) 2135/98<sup>12</sup>, the Council agreed to the introduction of a digital tachograph to render more secure and more accurate the recording and storage of data on driving times, breaks, rest periods and other work. The Committee for the adaptation of the tachograph to technical progress agreed on the technical specifications in March 2000. The Commission finally adopted the specifications in Regulation (EC) 1360/2002<sup>13</sup>, which was published on 5 August 2002. 24 months after this date of publication the digital tachograph will become obligatory in all new commercial vehicles to which Regulation (EEC) 3820/85 applies. The new tachograph will allow a faster, more accurate sifting of data and will minimise the possibility of fraud. This proposal seeks to provide a framework for the rules governing the checks using this instrument, encouraging a common approach while allowing sufficient discretion for national enforcement agencies to adapt it to their particular circumstances.
7. Both the European Parliament and the Council have advocated a strengthening of enforcement in the road transport sector. As regards the Council, as far back as 1985 when the initial social Regulations were being introduced, it stipulated clearly and in detail in a resolution the type of enforcement it required<sup>14</sup>. While some of the declarations issued by the Council were taken up in Directive 88/599/EC, other laudable actions were left to the initiative of individual Member States. The Commission has decided to take up some of these declarations within the new

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<sup>8</sup> For example, Hamelin, P., *Le travail des conducteurs routiers, structures de production, conditions de travail et risque*, Société des Ingénieurs de l'Automobile (SIA), Paris, p. 23; Maycock, G., *Driver sleepiness as a Factor in Car and HGV accidents*, TRL, Crowthorne, UK, 1995, p. 55; Van Ouwkerk F., *Relationships between Road Transport working conditions, fatigue, Health and Traffic Safety*, Traffic Research Centre, University of Groningen, 1987, p. 35.

<sup>9</sup> 'Le lien entre la durée du travail des conducteurs routiers et la sécurité routière au sein de l'Union Européenne' Etude no. B95-B2 7020-SIN 3973 (June 1997) Universität-Gesamthochschule Kassel, Institut für Arbeitswissenschaft.

<sup>10</sup> See footnote 8, p. 204.

<sup>11</sup> See footnote 8, p. 215.

<sup>12</sup> OJ L 274, 9.10.1998, p. 1.

<sup>13</sup> OJ L 207, 5.8.2002, p. 1.

<sup>14</sup> Council Resolution 85/C 348/01 of 20 December 1985 to improve the implementation of the social Regulations in road transport.

proposal to improve the common Community framework for such enforcement operations. In another Resolution<sup>15</sup> the Council emphasised the need for a consistent and uniform application and enforcement of all the regulations in the road haulage sector. It encouraged the Commission to examine ways of improving co-operation amongst administrations, which are appropriate for effectively identifying and prosecuting infringements of the social regulations. Finally, it called upon Member States to use state of the art technology to prevent infringement of road freight transport regulations. The Commission intends by this proposal to address the Council's concerns.

8. Discussions in the Council and European Parliament of the Commission proposal, which led to the sectoral working time Directive 2002/15/EC,<sup>16</sup> emphasised the need for effective enforcement of the rules. For this reason, and given the close link between the Community legal instruments on working time and driving time, it was decided to provide a more comprehensive approach to enforcement in this area by including enforcement of working time rules within this proposal.
9. The European Parliament has also often called for better enforcement of the current social rules, particularly during debates on the biennial Commission report on the implementation of Regulation (EEC) No 3820/85<sup>17</sup>. Indeed the own-initiative report by Mr Grosch MEP on transport policy and the harmonisation of social legislation, which incorporated Parliament's comments on the biennial report, called upon the Commission to ensure that in this field thorough controls are put in place together with effective sanctions.<sup>18</sup> The numerous Parliamentary Committee amendments put forward during 2002 to the Commission proposal to replace the current Regulation (EEC) No 3820/85<sup>19</sup>, the stance of the rapporteur, Mr Markov<sup>20</sup>, and the debate particularly in the Regional Affairs, Transport and Tourism Committee underlined a general concern to enhance the quantity and quality of checks in the road transport sector. Indeed the Parliament at first reading on 14 January put forward some amendments to the Commission proposal on the Regulation, which the Commission accepted while indicating that it would address them through a separate proposal. The Commission will seek to meet all these concerns through this proposal.
10. Within the road transport sector the social partners, organised in the form of a Sectoral Social Dialogue Committee established by Commission Decision 98/500/EC<sup>21</sup> at Community level, have long called for better enforcement of the rules to promote a level playing field within the single market and ensure that the driver's working conditions provided for in the legislation are respected. The Commission will seek to take account of their concerns for effective and responsible enforcement in its proposal.

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<sup>15</sup> Council Resolution 94/C 309/03 of 24 October 1994 on road freight transport in the Single European Market.

<sup>16</sup> OJ L 80, 23.3.2002, p. 35.

<sup>17</sup> Schlechter report A4-0106/97 on the Commission Report concerning the implementation in 1991-1992 of Regulation (EEC) No. 3820/85 on the harmonisation of certain social legislation relating to road transport (Seventeenth report by the Commission on the implementation of the social legislation relating to road transport).

<sup>18</sup> See footnote 4.

<sup>19</sup> OJ C 51 E, 26.2.2002, p. 234.

<sup>20</sup> Markov report A4-0388/2002.

<sup>21</sup> OJ L 225, 12.8.1998, p. 27.

11. The European Conference of Ministers of Transport (ECMT) has also consistently and over many years advocated better enforcement practice. For example, in its Resolution No 93/4<sup>22</sup>, the Ministers endorse the conclusions of the report on ‘Lorries and road traffic safety’<sup>23</sup>, which advocates the following: a greater number of checks on the road and especially at the premises of undertakings; co-liability of shipper/employer; diversification of checks; inclusion of spot fines; enhanced co-operation between Member States; harmonisation of checks and sanctions of Heavy Goods Vehicles. More recently the ECMT has endorsed a policy of linking the issuing of further multilateral quotas of transport licences to better enforcement by ECMT countries of social legislation<sup>24</sup>. The Commission has taken note of these recommendations.
12. The proposal will therefore address a commonly held call for better, more effective enforcement of Community rules.
13. The Commission has also undertaken a cost-benefit analysis of the new provisions to be introduced. A variety of scenarios were investigated, and the most beneficial percentage increases for overall checks and minimum percentage breakdown of roadside and premises inspections highlighted. The report concerned drew on experience and statistics not only from Member States but also from similar enforcement operations in the United States of America as well as from considerable research databases<sup>25</sup>.

## **B. CONSULTATION**

14. The Commission has sought over the years to identify those areas within which enforcement could be improved. In October 1998, it issued a comprehensive questionnaire to Member States asking for details on how Member States considered that enforcement in the social field could be improved. Most Member States replied and the Commission has taken up some of the ideas set out in the responses received. The need for better co-operation between Member State enforcement agencies was a recurring theme and has been addressed in this proposal.
15. Currently, the Commission is funding a project involving enforcement officers from all Member States and led by the Swedish National Road Administration<sup>26</sup>. The broad aim is to improve the enforcement of, and compliance with, the social legislation through an efficient implementation of the digital tachograph and an improvement and harmonisation of checking methods and practices. While the details of how to introduce the digital tachograph system throughout the Union are being discussed and enforcement practice revised, this proposal provides a general framework of rules. This framework reflects the initial discussion topics of this group.

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<sup>22</sup> CEMT/CM(1993) 4 final.

<sup>23</sup> CEMT/CM(93) 3.

<sup>24</sup> CEMT/CM(2001) 6 final.

<sup>25</sup> *Cost-Benefit Analysis of Road Safety Improvements*, 12 June 2003, ICF Consulting Ltd (UK) with Imperial College Centre for Transport Studies, London UK (hereafter: the ICF study).

<sup>26</sup> Vägverket (SNRA) project: Implementation of the digital tachograph.

16. The Commission has also consulted Euro Control Route (ECR), an international organisation of enforcement officers originally comprising participants from the Benelux enforcement agencies. Since the formal administrative agreement in 1999 between Benelux and France, a total of eight Member States have now acceded to the organisation, namely Benelux, France, Germany, Ireland, United Kingdom and Spain. ECR provides a forum to exchange ideas on best practice, and has three aims: to facilitate an exchange of intelligence; to organise joint enforcement operations; and to promote cross-border practical training. Several members of ECR have commented on the Commission's intentions and account has been taken of most of their comments in the proposal.
17. The Sectoral Social Dialogue Committee on road transport was invited to comment on a pre-draft text but so far it has not officially replied.
18. In its opinion at first reading delivered on 14 January 2003<sup>27</sup>, the European Parliament has already endorsed the introduction of various measures contained in this proposal to strengthen enforcement practice throughout the Union, following discussions on the Commission's proposal to amend the main Regulation concerning driving times and rest periods<sup>28</sup>.

**C. LEGAL BASE**

19. The legal base is Article 71 of the EC Treaty (co-decision procedure).

**D. OBJECTIVE AND SCOPE**

20. The proposal aims to update and enhance the quantity and quality of enforcement operations. From the statistics provided for the Commission's biennial reports, it appears that some Member States have already reached or exceeded the proposed increase in checks on a regular basis. The introduction of the digital tachograph without retro-fitting will initially cause difficulties in enforcement given the need to check a mixture of old tachograph discs and the new electronic data to obtain a coherent picture. Hence it is proposed that the rise in quantity of checks is introduced in stages, reflecting the gradual replacement of vehicle fleets and the consequent predominance of the new tachograph. Deterrence is not only the potential fine imposed, it is also the likelihood of being detected. An increase in the number of checks can therefore encourage greater compliance.
21. To enhance the quality of checks, it is essential that enforcement officers from all the relevant competent authorities be given sufficient training and equipment. Whereas it is in the first place up to Member States themselves to ensure that officers receive the necessary training in a national context, the proposal places a requirement on Member States to establish joint training programmes and exchanges with other Member States and to provide officers with a standard set of equipment. Only when enforcement officers have the means to address the increasing problem of offences against Community rules, can the Community rightly expect results. The list of

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<sup>27</sup> See footnote 20.

<sup>28</sup> See footnote 3.

equipment may be updated by the Commission acting on advice from the committee of national representatives.

22. It is often the case that a number of competent authorities within a Member State are responsible for enforcing European road transport social legislation. This leads to a lack of coordination of checks within the Member State as well as difficulties for the enforcement authorities of neighbouring Member States to identify correctly the competent authority with which they should be maintaining dialogue. It can also mean that differing priorities are assigned to checks and that liaison between those checking at the premises and at the roadside is variable. Instead of a coherent enforcement strategy in road transport, separate agencies may pursue their own activities to enforce compliance, perhaps to the detriment of an effective and efficient use of the overall resources. The Commission's related proposal on enforcement in the field of road safety also recognises this as a problem and in both instances a common approach is proposed, namely via the designation by the Member States of an enforcement co-ordination point as explained below.
23. The Commission proposal requires Member States to designate an enforcement coordination point and places upon the relevant competent authority the requirement to co-ordinate not only statistical returns but also the development and implementation, in consultation with other internal competent authorities, of a coherent enforcement strategy, to be communicated regularly to the Commission and other Member States.
24. The Commission is aware that dialogue between enforcement agencies in different Member States is currently variable and recognises that a system should be put in place for a regular exchange of information and best practice between Member States. To that end it proposes four measures:
  - (a) the promotion of electronic data exchange systems between enforcement coordinating points; and in any case the revision of the current Community common format data exchange document as set out in Commission Decision 93/172/EEC<sup>29</sup>;
  - (b) an increase in the minimum number of concerted checks by Member State competent authorities;
  - (c) the setting up of a standing committee comprising representatives of enforcement agencies from all Member States to exchange experience, information and best practice and to address jointly any enforcement issues arising at a European level; and
  - (d) encouragement of joint training initiatives between enforcement authorities, such as that currently undertaken by Euro Control Route<sup>30</sup>.

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<sup>29</sup> OJ L 72, 25.3.1993, p. 30.

<sup>30</sup> Euro Control Route: a co-operation framework for Member State road transport enforcement agencies formalised in an Administrative Agreement between B, NL, LUX and F on 5 October 1999 and to which D, IRL, UK and E have since adhered, with other current and future Member States' authorities expressing interest (DK, PL) as well as an EEA country (N).

25. The Commission proposal also addresses the issue of sanctions. While the harmonisation of sanctions remains a subject which Member States are reluctant to pursue, the Commission considers that excessive variations in Member States' treatment of offences against Community legislation do not offer the industry a coherent message on the importance of adhering to the rules. To promote clarity in this delicate but important aspect of enforcement, the Commission proposal invites Member States to agree on a list of offences which would be commonly recognised as serious. In this way a common view on enforcement priorities could be introduced throughout the Union.
26. General findings of the cost-benefit study mentioned before are that there is a net benefit-cost ratio of full implementation of all the proposed measures of 4.18 to 1 for the EU as a whole. These figures do not take into account up-front costs of introducing the new measures and the lag between incurring the costs and realising the benefits. An analysis of the benefit-cost ratio of full implementation over ten years gives a ratio of 3.54 to 1 for the EU as a whole<sup>31</sup>. Moreover, the study estimates that implementation of the proposed measures will result in a maximum cost reduction of EUR 4 billion (or 0.047% in terms of percentage of GNP)<sup>32</sup>. Implementing the proposed measures would moreover result in a reduction of 951 fatalities and 59 529 injuries annually in the EU<sup>33</sup>.
27. The Commission is keen to ensure that uniform and effective enforcement of Community social rules is facilitated, that developments in this field are adequately monitored and that good practice is encouraged. To that end it advocates a standing committee through which common views and decisions on the current application and enforcement of the rules can be reached swiftly and decisively. This Committee mirrors the Committee put forward in Commission proposal COM(2001) 573 final and would be subsumed into that proposed Committee were the above proposal adopted. The Commission envisages a clear link between the Committee and the Joint Committee of social partners meeting at European level through the new Committee's rules of procedure.

## **E. SPECIFIC PROVISIONS**

28. The provisions of the proposed Directive are explained in the following paragraphs (a comparative table showing the text of the current Directive 88/599/EEC and the provisions of the proposal is also attached).
29. Article 1 sets out the purpose of the Directive and the legislation to which the following provisions on enforcement are applicable. The new sectoral working time legislation, Directive 2002/15/EC, is now included. If there is to be respect for the legislation, then coherent enforcement of the provisions of this Directive and those for driving time and rest periods is vital. Moreover, problems identified can be raised and addressed in the Committee forum, where, in liaison with the social partners committee, they can be more easily resolved.

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<sup>31</sup> ICF study p. 50.

<sup>32</sup> ICF study, p. vii.

<sup>33</sup> ICF study, p. vii.



30. Article 2 sets out the checking system to be implemented in the Member States. The requirement for a representative sample in checking is maintained in the proposal but also made more detailed in terms of statistical breakdown. Both Article 2(3) and the new Article 3 stipulate that the statistics provided by Member States should be broken down in greater detail. Not only will this facilitate a more targeted approach in terms of road network and particular road transport sectors within any future enforcement strategy, it will also allow an overview of developments across the Union, and will highlight common problems. These potential problem areas can be discussed in the Committee set up in Article 13 and also can be highlighted in any future Commission reports.
31. Article 2(2) raises the minimum overall percentage of checks from 1% to 3%. Several Member States already achieve this higher standard and as most Member States comfortably reach the current 1% of days worked by drivers of vehicles falling within the scope of Regulation (EEC) Nos 3820/85, 3821/85 and Directive 2002/15/EC, it is time to raise the standard to one that is both challenging and achievable. In so doing, the Commission is also taking account of Amendments 60, 63, 70(c) and an element of Amendment 11 in the European Parliament's opinion at first reading on the Commission proposal to amend Regulation (EEC) No 3820/85<sup>34</sup>, all of which advocate an increase in the minimum percentage of checks.
32. Article 2(2) second paragraph allows the Committee established under Article 13 to agree on an increase of the percentage of checks above the proposed 3%. This is in recognition of the fact that once the digital tachograph is introduced, inspectors will have to deal with a system where both the old and new tachographs will be in use and have to check a driver's hours: paper discs, vehicle unit and driver card data plus any printouts. However, as fleets are renewed and the digital tachograph becomes the predominant instrument, it represents a means of identifying any infringements more quickly and accurately. Consequently, it will become feasible to raise the quantity of checks. The impact assessment study has found that raising the number of checks beyond 10% of days worked is unlikely to be cost beneficial<sup>35</sup>.
33. Article 2(2) third paragraph raises the minimum proportion of checks to be carried out at the roadside or on the premises. Instead of at least 15% roadside checks and at least 25% premises checks in the current provision, the proposal provides for at least 30% roadside and at least 50% premises checks. The impact assessment study mentioned before has found that checks at the premises of transport firms are more effective than roadside checks and more generally that encouraging transport firms to maintain good safety management practices is highly effective in reducing lorry and bus related accidents<sup>36</sup>.
34. Article 3 deals specifically with the statistics which Member States are to collect and forward to the Commission. The breakdown into various subcategories is a new element within this Directive. It will allow Member States and the Commission to analyse in more depth any difficulties with the current rules experienced by the sector – see also paragraph 30 above.

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<sup>34</sup> See footnote 20.

<sup>35</sup> ICF study, p. 51.

<sup>36</sup> ICF study, p. 51.

35. Article 4(1) reiterates the requirement in the current Directive to ensure sufficient coverage of the road network by roadside checks. However, the Commission is aware from enforcement officers as well as the road transport industry that the number of lay-bys and service stations on the road and motorway network is insufficient not only to allow drivers to take a break and comply with the legislation but also for enforcement officers to carry out checks without holding up traffic. For this reason Member States are obliged under Article 4(2)(a) to make sufficient provision for lay-bys in road infrastructure plans, particularly along motorways, and to ensure that service stations along motorways can function as checkpoints. There is little point in requiring more roadside checks if there are not enough places to carry out such checks.
36. While roadside checks can be targeted or structured, maintaining an element of random checks ensures that for the driver the likelihood of checks is still present over the whole road network. The provisions of Article 4(2)(b) should counteract any complacency on the part of the driver or indeed of the enforcement authority.
37. The current Directive mentions that roadside checks should be carried out without discrimination. To avoid any uncertainty as to the nature of discrimination, Article 4(3) spells out the types of discrimination to be avoided, so that enforcement is carried out without regard to nationality. It is up to Member States to ensure through the guidelines they supply to enforcement officers that this provision is always respected in practice.
38. The current Directive sets out a list of elements, which should form the basis of a roadside check. The proposal in Article 4(4) puts these elements in an Annex (Part A) and adds two new elements in terms of working time: maximum weekly working time and night-time working time. These two elements could also be checked at the roadside. In so doing, the Commission addresses elements of Amendments 10, Amendments 11 and 70(b) in the European Parliament's opinion at first reading on the Commission proposal to amend Regulation (EEC) No 3820/85<sup>37</sup>.
39. The current Directive stipulates that an authorised officer should be provided with a list of principle points to be checked plus a language chart. What would be more useful than a language chart is the provision of certain standard checking equipment, as set out in the new Article 4(5)(b). It should be possible to update the description of this equipment in the Annex II, as new and proven equipment becomes available on the market. Hence, the possibility of amending this Annex through the Committee is included in Article 15, as Committee representatives should know and could agree on what would be most appropriate and widely acceptable. An example might be the development of suitable enforcement software with relevant terminology in different languages. In any case, to ensure effective enforcement, Member States will need to invest in appropriate equipment for their staff.
40. Article 4(6) reiterates the current provision by which possible infringements by a driver of a vehicle registered in another Member State can be dealt with in consultation with the Member State competent authorities concerned. This paragraph is specifically linked with Article 7(1)(d) which seeks to facilitate this form of dialogue between enforcement authorities.

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<sup>37</sup> See footnote 20.

41. Article 5 concerns concerted checks. The minimum number of concerted checks has been raised from two to six per year. From the biennial report on the implementation of Regulation (EEC) No 3820/85, it is evident that a number of Member States already exceed this new proposed limit. A larger number of such checks will encourage a more practical and coherent dialogue between Member State enforcement authorities, as well as concentrate activity on long distance operations where driving times and rest period rules can frequently be breached.
42. Article 6 deals with checks at the premises of undertakings. Enforcement authorities are obliged to take into account all elements of their past experience when drawing up their checking schedules. Serious breaches of driving time and working time rules identified in roadside checks will now entail additional checks at the premises. Indeed, checking the sectoral working time rules should also form part of the normal enforcement regime. The tachograph records will allow a more thorough check to be made of adherence to these rules.
43. Annex I (Part B), to which Article 6(2) makes reference, sets out the additional checks to be made. Unlike checks at the roadside there is no discretion here to concentrate on certain elements of the list to facilitate a quick and focused check. It is considered that checks at the premises should always be a thorough affair. However the option in Article 6(5) for authorities to ask certain low-risk firms to forward the relevant documents for them to check is maintained, with a slight adjustment to recognise the need to accommodate digital tachograph data.
44. As enforcement officers who check premises are not always from the same administrative competent enforcement authority as those performing checks on the roadside, it is necessary to ensure that they too are adequately equipped for the task, hence reference to equipment set out in Annex II in Article 6(3)(b).
45. Article 6(4) obliges enforcement authorities of one Member State to take account of any information received from the primary enforcement body of another Member State concerning particular transport activities. This will encourage a greater coherence between competent authorities and a greater confidence that information passed on will be acted on by other enforcement bodies.
46. Article 7 introduces the concept of a coordinating enforcement body. Certain duties are ascribed to this authority: statistical coordination and returns, drawing up a national enforcement strategy (which will necessarily need to involve all enforcement authorities concerned), and representing the Member State to other Member State enforcement bodies as well as being on the proposed Committee. Member States are obliged to inform the Commission, and thus the other Member States, of any change in this arrangement. An obligation is placed on this coordinating enforcement body under Article 7(2) to actively promote collaboration between the other national enforcement agencies concerned, which places this authority in a key position to develop an enforcement strategy. Moreover, Article 7(3) requires that the forum, to be instituted by the Committee under Article 13, will not only facilitate an exchange of data, intelligence and experience but also provide a measure of peer review of these national enforcement strategies. The way is also left open for the exchange of information to take place through an alternative forum if the Committee so decides. This could be the Euro Control Route group, which has expanded its membership to 8 Member States.

47. Article 8 deals specifically with the exchange of information between Member States concerning enforcement of the Community road transport social rules. In view of the widespread introduction of electronic data exchange systems within Member States, it is logical, if Member States are serious about cross-border enforcement, to require them to establish such a system across the Union. It is recognised that the current standard reporting form set out in Commission Decision 93/172/EEC is rarely if ever used in practice. An alternative system may be used or, if Member States so wish, an updated standard form may be introduced.
48. Article 9 deals with offences. To encourage a more effective and targeted enforcement effort and a more appropriate application of sanctions, Member States will have to establish a common risk rating system for companies (paragraph 1). Under such a system, companies that adhere to the rules would be checked less and companies with a poor track record would be checked more intensively. This could facilitate a more efficient use of enforcement staff time and resources. Such a system is already in practice in some Member States such as the Netherlands, and also throughout the United States, and has proved an effective deterrent and method of resource management. It could now be an expression of best practice in enforcement within the Union.
49. The criteria and modalities for such a risk assessment system should be determined on a common basis to prevent distortion in enforcement effort throughout the Union. The new Committee should determine the criteria for this purely operational matter with input from the social partners.
50. Paragraphs 2 and 3 of Article 9 ensure that the full range of sanctions is available to enforcement authorities. Special mention is made in paragraph 3 of proportionate financial sanctions for those operators or indeed those along the transport chain who have aided or abetted an infringement that has resulted in considerable financial gain.
51. Paragraph 4 sets out a number of infringements which can be commonly regarded as serious throughout the Union and be treated appropriately. Under paragraph 5, individual Member State sanctions for such infringements will be circulated to all other Member States to indicate the different approaches adopted.
52. Article 10 lays down the standard paragraph on penalties.
53. As a result of information received from Member States under Articles 9 and 10, under Article 11 the Commission will draw up a report comparing and contrasting the relevant infringements and level of sanctions within the Union. On this basis, the Commission could conclude to what extent any further harmonisation in this area may be feasible.
54. Article 12(1) indicates that one of the tasks of the Commission acting through the proposed Committee under Article 13 is to establish guidelines for best practice in enforcement. This information could be disseminated through the Commission's biennial report on the implementation of social legislation in road transport.
55. Through Article 12(2) the Commission seeks to address the issue of training. As training of enforcement staff on this complex legislation is vital, but an awareness of how other Member States' enforcement bodies perceive the legislation is also very important, Member States should establish joint training programmes and exchanges

with other Member States, at least once a year. Joint training programmes between Member States are already undertaken several times a year under the auspices of Euro Control Route. All Member States could easily organise a bilateral or multilateral training programme on a reciprocal basis at least once a year. This is all the more necessary with the introduction of the new digital tachograph system. A coordinated approach to the data generated by this device is essential.

56. Article 12(3) addresses an issue that has already become established practice in certain Member States: the question of what to accept when there is a break in the timeline of charts for the past week and the last driving day of the previous week. A holiday note or sick note signed by the company is accepted by some authorities as a valid note covering any unaccounted periods. However, this practice is not based on any legislative provision at European level. To ensure there is a commonly understood and accepted practice amongst enforcement officers and the industry, a common line should be agreed within the Committee. This is all the more necessary if the extraterritoriality provisions for enforcement in Article 10 of the Commission Proposal COM(2001) 573 final<sup>38</sup> to revise Regulation (EEC) No 3820/85 come into effect. This provision also addresses an element of Amendment 10 in the European Parliament's opinion at first reading on the Commission proposal to amend Regulation (EEC) 3820/85<sup>39</sup>.
57. Articles 13 to 15 establish the Committee to provide a forum for national representatives to discuss developments in enforcement in general and to examine specific issues: roadside checklist, standard checking equipment, a common undertaking risk assessment system, best practice and a common 'holiday/sick leave' form. The forum will also facilitate a common and coherent approach to an understanding of the Directive as well as fostering a dialogue with the industry. The current Committee constituted under Article 18(1) of Regulation (EEC) No 3821/85 may also be called upon to tackle these issues and will thus provide a measure of coherence in discussions on enforcement of Community road transport social legislation.
58. Articles 16 to 18 insert the standard final provisions relating to transposition into national law, communication of legal texts and concordance to the Commission and repeal of the current legislative instrument.

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<sup>38</sup> See footnote 3.  
<sup>39</sup> See footnote 20.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport<sup>5</sup>, Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport<sup>6</sup> and 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<sup>7</sup> are important for the creation of a common market for inland transport services.
- (2) In the White Paper “European transport policy for 2010: time to decide”<sup>8</sup>, 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

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<sup>1</sup> OJ C [... ], [... ], p. [... ].

<sup>2</sup> OJ C [... ], [... ], p. [... ].

<sup>3</sup> OJ C [... ], [... ], p. [... ].

<sup>4</sup> OJ C [... ], [... ], p. [... ].

<sup>5</sup> 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).

<sup>6</sup> OJ L 370, 31.12.1985, p. 8. Regulation as last amended by Commission Regulation (EC) No 1360/2002 (OJ L 207, 5.8.2002, p. 1).

<sup>7</sup> OJ L 80, 23.3.2002, p. 35.

<sup>8</sup> COM(2001) 370.

States, to co-ordinate inspection activities and to promote the training of inspecting officers.

- (3) It is therefore necessary to ensure proper application 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.
- (4) The replacement of the analogue tachograph by a digital tachograph will progressively enable a greater volume of data to be checked more swiftly and more precisely and, for that reason, Member States will increasingly be in a position to undertake a greater volume of checks. The percentage of days worked by drivers of vehicles coming within the scope of the social legislation should therefore be increased to 3%.
- (5) Sufficient standard equipment should be available to all competent enforcement authorities to enable them to carry out their duties effectively and efficiently.
- (6) Within each Member State there should be a single coordinating enforcement body acting as a national focal point, with responsibility for overseeing and implementing a coherent national enforcement strategy in consultation with other relevant competent authorities. That body should also compile relevant statistics.
- (7) Co-operation between Member State enforcement authorities should be further promoted through concerted checks, joint training initiatives, the establishment of a common interoperable electronic system of information, and the exchange of intelligence and experience.
- (8) 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 bodies.
- (9) 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<sup>9</sup>.
- (10) A common recognition of specific offences in relation to Regulation (EEC) Nos 3820/85 and 3821/85 should promote the harmonisation of enforcement within the Member States.
- (11) Since the objectives of the proposed action, namely to lay down clear common rules on minimum conditions for checking the correct and uniform implementation of Directive 2002/15/EC and of Council Regulation (EEC) Nos 3820/85 and 3821/85, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for co-ordinated 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 those objectives.

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<sup>9</sup> OJ L 184, 17.7.1999, p. 23.

- (12) Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonisation of certain social legislation relating to road transport<sup>10</sup> and Regulation (EEC) No 3821/85 should therefore be replaced,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Subject-matter**

This Directive lays down minimum conditions for checking the correct and uniform implementation of Regulation (EEC) Nos 3820/85 and 3821/85, and Directive 2002/15/EC.

*Article 2*

**Checking systems**

1. Member States shall organise a system of appropriate and regular checks of correct and uniform 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 Regulation (EEC) Nos 3820/85 and 3821/85, and of drivers and mobile workers falling within the scope of Directive 2002/15/EC.

2. Each Member State shall organise checks in such a way that they cover each year at least 3% of days worked by drivers of vehicles falling within the scope of Regulation (EEC) Nos 3820/85 and 3821/85.

This minimum percentage may be increased by the Commission in accordance with the procedure referred to in Article 13(2).

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.

3. 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 premises of undertakings, the number of working days checked and the number of infringements reported.

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<sup>10</sup> OJ L 325, 29.11.1988, p. 55.



### *Article 3*

#### **Statistics**

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

- (a) for roadside inspections: type of road, namely whether it is a motorway, a national or a secondary road;
- (b) for premises inspections:
  - (i) type of transport activity, namely whether the activity is international or domestic; passenger or freight; own account or hire and reward; perishable or non-perishable goods;
  - (ii) size of company fleet.

### *Article 4*

#### **Roadside checks**

1. Roadside checks shall be organised in different places and at any time, covering 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 existing and planned roads; in particular, that service stations along the motorways can function as checkpoints;
  - (b) checks are carried out following a random rotation system.
3. The elements to be verified at roadside checks shall be as laid down in Part A of Annex I. Checks may concentrate on a specific such element if the situation so requires.
4. Roadside checks shall be carried out without discrimination. In particular, inspecting 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.
5. The authorised inspecting officer shall be provided with:
  - (a) a list of the principal elements 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 operations to check at the roadside drivers and vehicles falling within the scope of Regulation (EEC) Nos 3820/85 and 3821/85.

Such operations shall be undertaken at the same time by the enforcement authorities of two or more Member States, each operating in their own territory.

#### *Article 6*

#### **Checks at the premises of undertakings**

1. Checks at premises shall be planned in the light of past experience of different categories of transport. They shall also be carried out if serious infringements of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or Directive 2002/15/EC have been detected at the roadside.
2. Checks at the premises of undertakings shall comprise, in addition to the elements listed in Part A of Annex I, the elements listed in Part B of that Annex.
3. The authorised inspecting officer shall be provided with:
  - (a) a list of the principal elements 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. The authorised inspecting officer in a Member State shall in the course of his inspection take into account any information provided by the designated coordinating enforcement body of another Member State referred to in Article 7(1) concerning the activities of the undertaking 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*

### **Co-ordinating enforcement body**

1. Member States shall designate a co-ordinating enforcement body.

The body shall have the following tasks:

- (a) to ensure coordination between the different competent authorities within one Member State as regards actions taken under Articles 4 and 6 and 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 draw up a coherent national enforcement strategy;
- (d) to be primarily responsible for assisting the competent authorities of other Member States within the meaning of Article 4(6).

The body shall be represented on the Committee referred to in Article 13(1).

2. Member States shall notify the Commission of the coordinating enforcement body and the Commission shall advise the other Member States accordingly.
3. 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 13(1) and any such body as the Commission may designate in accordance with the procedure referred to in Article 13(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 coordinating enforcement bodies notified to the Commission in accordance with Article 7(2):
  - (a) at least once every three months commencing 1 January 2005;
  - (b) upon a specific request by a Member State in individual cases.
2. Member States shall establish electronic systems for the exchange of information, using a standard format for ease of comprehension.

3. To that end, the competent authorities in each Member State may use the standard reporting form set out in Commission Decision 93/172/EEC<sup>11</sup> or they may designate a common system following consultation with the Commission.

### *Article 9*

#### **Common risk rating system and offences**

1. Member States shall introduce a common risk rating system for undertakings based on the number and severity of any infringements of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or Directive 2002/15/EC that an individual undertaking has committed.

Undertakings with a high-risk rating shall be checked more closely and more often and, if repeated offences are detected, they shall be more heavily penalised. The criteria and detailed rules for implementing such a system shall be determined by the Commission in accordance with the procedure referred to in Article 13(2), taking into account the extent to which any infringements as referred to in paragraph 4 have been committed.

2. Member States shall include amongst their sanctions the temporary immobilisation of the vehicle, and/or, in the case of passenger transport, they may compel the driver to take a daily rest period, or withdraw, suspend or restrict an undertaking's licence or a driving licence. The use of sanctions shall be effective, proportionate and dissuasive.
3. Member States shall ensure that a system of proportionate financial sanctions is in force if non-compliance with Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or Directive 2002/15/EC on the part of an undertaking, or associated consignors, freight forwarders or sub-contractors, leads to profits.
4. Member States shall recognise, in particular, each of the following infringements of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or Directive 2002/15/EC as constituting a serious offence:
  - (a) exceeding the maximum daily, six-day or fortnightly driving time limits by a margin of 20% or more;
  - (b) disregarding the minimum daily or weekly rest period by a margin of 20% or more;
  - (c) disregarding the minimum break by a margin of 33% or more;
  - (d) exceeding the maximum weekly working time of 60 hours by a margin of 20% or more.
5. Member States shall notify to the Commission the sanctions laid down for those infringements. The Commission shall inform the other Member States accordingly.

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<sup>11</sup> OJ L 72 , 25.3.1993, p. 30.

## *Article 10*

### **Penalties**

Member States shall lay down the rules on penalties for infringement of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 16.

## *Article 11*

### **Report**

Within three years of the entry into force of this Directive, the Commission shall submit to the European Parliament and to the Council a report analysing the penalties set out in the legislation of the Member States for defined offences.

The report shall indicate the degree of difference between the penalties, and to what extent harmonisation of minimum and maximum penalties for a defined offence should be pursued.

## *Article 12*

### **Best practice**

1. In accordance with the procedure referred to in Article 13(2), the Commission shall establish guidelines on best practice in enforcement.

Those guidelines shall be included in the biennial report referred to in Article 16(2) of Regulation (EEC) No 3820/85.

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 the coordinating enforcement body with their counterparts in other Member States.
3. If a driver has been on sick leave or on annual leave during the period mentioned in the first indent of the first subparagraph of Article 15(7) of Regulation (EEC) No 3821/85, he shall produce a form, duly attested by his employer, if asked to do so by an authorised inspecting officer.

That form shall be drawn up by the Commission in accordance with the procedure referred to in Article 13(2).

## *Article 13*

### **Committee**

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 14*

#### **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 13(2), adopt implementing measures, in particular with one of the following aims:

- (a) to clarify the provisions of the Directive and to ensure a common approach;
- (b) to encourage a coherence of approach between enforcement bodies;
- (c) to facilitate dialogue between the industry and enforcement bodies.

#### *Article 15*

#### **Updating of the Annexes**

Amendments to the Annexes which are necessary to adapt them to the developments of best practice shall be adopted in accordance with the procedure referred to in Article 13(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 January 2006 at the latest. 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 those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

*Article 17*

**Repeal**

Directive 88/599/EEC shall be repealed with effect from the date of entry into force of 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*  
[...]

## ANNEX I

### Part A

#### **Roadside checks**

The elements to be covered by roadside checks are:

- (1) daily driving periods, breaks and daily 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;
- (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 1 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 as defined in Annex I to Council Directive 70/156/EEC)<sup>1</sup>;
- (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) last weekly rest period;
- (5) 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;
- (6) working time weekly maximum of 60 hours in any one week as laid down in Article 4(a) of Directive 2002/15/EC
- (7) daily night-time working hours as set out in Article 7 of Directive 2002/15/EC.

### Part B

#### **Checks at the premises of undertakings**

The elements of checks at the premises of undertakings, in addition to those for roadside checks, are:

- (1) weekly rest periods and driving periods between these rest periods;
- (2) two-weekly limitation of driving hours;
- (3) maximum average weekly working time over a four-month reference period, or six-month reference period, if national legislation so permits;

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<sup>1</sup> OJ L 42, 23.2.1970, p. 8.



- (4) the use of record sheets, digital tachograph data and/or the organisation of drivers' working times;
- (5) average maximum weekly working time of 48 hours over the reference period in Article 4(a) of Directive 2002/15/EC;
- (6) check on co-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 the rules contained in Regulation (EEC) Nos 3820/85 and 3821/85 or Directive 2002/15/EC.

## **ANNEX II**

### **Standard equipment to be available to enforcement staff**

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

- (1) portable computer with software capable of downloading data from the vehicle unit and driver card of the digital tachograph and analysing data or transmitting findings to a central database for analysis. This equipment should be interoperable between Member State competent enforcement authorities;
- (2) equipment to check the old tachograph sheets.

## Comparative Table

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulation (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities

<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>
<i>Article 1</i>	<i>Article 1</i>
1. The objective of this Directive is to lay down minimum conditions for checking the correct and uniform application of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.	This Directive lays down minimum conditions for checking the correct and uniform implementation of Regulation (EEC) Nos 3820/85 and 3821/85, <u>and Directive 2002/15/EC.</u>

<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>
<i>Article 2</i>	<i>Article 2</i>
1. Member States shall organise a system for appropriate and regular checks, both at the roadside and at premises of undertakings, covering each year a large and representative cross-section of drivers, undertakings and vehicles of all transport categories falling within the scope of Regulations (EEC) No 3820/85 and 3821/85.	1. Member States shall organise a system of appropriate and regular checks of correct and uniform implementation, as <u>referred to in Article 1</u> , 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 Regulation (EEC) Nos 3820/85 and 3821/85, <u>and of drivers and mobile workers falling within the scope of Directive 2002/15/EC.</u>
2. Each Member State shall organise checks in such a way that:  - they cover each year at least 1 % of days worked by drivers of vehicles falling within the scope of Regulations (EEC) Nos 3820/85 and (EEC) No 3821/85,  - not less than 15 % of the total number of the working days checked shall be checked at the roadside and not less than 25 % at the premises of undertakings.	2. Each Member State shall organise checks in such a way that they cover each year at least <u>3%</u> of days worked by drivers of vehicles falling within the scope of Regulation (EEC) Nos 3820/85 and 3821/85.  This minimum percentage may be increased by the Commission in accordance with the procedure referred to in Article 13(2).  Not less than <u>30%</u> of the total number of the working days checked shall be checked at the roadside and not less than <u>50%</u> shall be checked at the premises of undertakings.

<p>3. The number of drivers checked at the roadside, the number of checks at premises of undertakings, the number of working days checked and the number of infringements reported shall be included, <i>inter alia</i>, in the information submitted to the Commission in accordance with Article 16 (2) of Regulation (EEC) No 3820/85.</p>	<p>3. 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 premises of undertakings, the number of working days checked and the number of infringements reported.</p>
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<p><i>Council Directive 88/599/EEC</i></p>	<p><i>Proposal</i></p> <p style="text-align: center;"><i>Article 3</i></p>
<p><b>New Article</b></p>	<p><u>Member States shall ensure that statistics collected on the checks organised in accordance with Article 2(1) are broken down into the following categories:</u></p> <p>(a) for roadside inspections: type of road, namely whether it is a motorway, a national or a secondary road;</p> <p>(b) for premises inspections:</p> <p style="padding-left: 40px;">(i) type of transport activity, namely whether the activity is international or domestic; passenger or freight; own account or hire and reward; perishable or non-perishable goods;</p> <p style="padding-left: 40px;">(ii) size of company fleet.</p>

<p><i>Council Directive 88/599/EEC</i></p> <p style="text-align: center;"><i>Article 3</i></p>	<p><i>Proposal</i></p> <p style="text-align: center;"><i>Article 4</i></p>
<p>1. Roadside checks shall be organised in different places at any time, covering a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.</p>	<p>1. Roadside checks shall be organised in different places and at any time, covering a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.</p>
<p><b>New paragraph</b></p>	<p><u>2. Member States shall ensure that:</u></p> <p><u>(a) sufficient provision is made for checkpoints on existing and planned roads; in particular, that service stations along the motorways can function as checkpoints;</u></p>

	<u>(b) checks are carried out following a random rotation system.</u>
<p>2. The elements of roadside checks are:</p> <ul style="list-style-type: none"> <li>- daily driving periods, breaks and daily rest periods and, in the case of clear indications of irregularities, also the record sheets for the preceding days carried on the vehicle in accordance with Article 15 (7) of Regulation (EEC) No 3821/85,</li> <li>- last weekly rest period, where appropriate,</li> <li>- correct functioning of the recording equipment (determination of possible misuse of the equipment and/or record sheets) or, where appropriate, presence of the documents referred to in Article 14 (5) of Regulation (EEC) No 3820/85.</li> </ul>	<p>3. The elements to be verified at roadside checks shall be as laid down in Part A of Annex I. Checks may concentrate on a specific such element, if the situation so requires.</p>
<p>3. Roadside checks shall be carried out without discrimination of vehicles and drivers, whether resident or not.</p>	<p>4. Roadside checks shall be carried out without discrimination. In particular, inspecting officers shall not discriminate <u>on any of the following grounds:</u></p> <ul style="list-style-type: none"> <li><u>(a) country of registration of vehicle;</u></li> <li><u>(b) country of residence of driver;</u></li> <li><u>(c) country of establishment of undertaking;</u></li> <li><u>(d) origin and destination of journey.</u></li> </ul>
<p>4. To facilitate the authorised inspecting officer's task, they shall be provided with:</p> <ul style="list-style-type: none"> <li>- a list of the principal points to be checked,</li> <li>- a language chart containing the expressions currently used and relating to road transport operations. The Commission will provide the Member States with such a chart.</li> </ul>	<p>5. The authorised inspecting officer shall be provided with:</p> <ul style="list-style-type: none"> <li><u>(a) a list of the principal elements to be checked, as set out in Part A of Annex I;</u></li> <li><u>(b) certain standard checking equipment, as set out in Annex II.</u></li> </ul>
<p>5. If the findings of a roadside check on the driver of a vehicle registered in another Member State provide grounds to believe that infringements have been committed which cannot be detected during the check due to lack of necessary data, the competent authorities of the Member States concerned shall assist each other to clarify the situation. In cases where, to this end, the competent</p>	<p>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.</p>

Member State carries out a check at the premises of the undertaking, the results of this check shall be communicated to the other State concerned.	
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<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>
<i>Article 4</i>	<i>Article 6</i>
<p>1. Checks at premises as provided for in Article 2(1) shall be planned taking account of past experience of different categories of transport.</p> <p>Checks shall also be carried out at premises of undertakings when serious breaches of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 have been detected at the roadside.</p>	<p>1. Checks at premises shall be planned in the light of past experience of different categories of transport. They shall also be carried out if serious <u>infringements</u> of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or <u>Directive 2002/15/EC</u> have been detected at the roadside.</p>
<p>2. The elements of checks at the premises of undertakings, in addition to those for roadside checks, are:</p> <ul style="list-style-type: none"> <li>- weekly rest periods and driving periods between these rest periods,</li> <li>- two-weekly limitation of driving hours,</li> <li>- compensation for reduced daily or weekly rest periods,</li> <li>- the use of record sheets and/or the organisation of drivers' working times.</li> </ul>	<p>2. Checks at the premises of undertakings shall comprise, <u>in addition to the elements listed in Part A of Annex I, the elements listed in Part B of that Annex.</u></p>
<b>New paragraph</b>	<p><u>3. The authorised inspecting officer shall be provided with:</u></p> <ul style="list-style-type: none"> <li>(a) <u>a list of the principal elements to be checked, as set out in Parts A and B of Annex I;</u></li> <li>(b) <u>certain standard checking equipment, as set out in Annex II.</u></li> </ul>
<b>New paragraph</b>	<p><u>4. The authorised inspecting officer in a Member State shall in the course of his inspection take into account any information provided by the designated coordinating enforcement body of another Member State referred to in Article 7(1) concerning the activities of the undertaking in that other Member State.</u></p>

3. For the purposes laid down in this Article, checks carried out at the premises of the competent authorities, on the basis of relevant documents 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.	5. For the purposes of <u>paragraphs 1 to 4</u> , 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.
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<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>
<i>Article 5</i>	<i>Article 5</i>
1. Member States shall, at least twice yearly, undertake concerted operations to check at the roadside drivers and vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.	Member States shall, at least <u>six times per year</u> , undertake concerted operations to check at the roadside drivers and vehicles falling within the scope of Regulation (EEC) Nos 3820/85 and 3821/85.
2. Such operations shall, wherever possible, be undertaken at the same time by the enforcement authorities of two or more Member States, each operating on their own territory.	Such operations shall be undertaken at the same time by the enforcement authorities of two or more Member States, each operating in their own territory.

<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>
	<i>Article 7</i>
<b>New Paragraph</b>	<p><u>1. Member States shall designate a coordinating enforcement body.</u></p> <p><u>The body shall have the following tasks:</u></p> <p><u>(a) to ensure coordination between the different competent authorities within one Member State as regards actions taken under Articles 4 and 6 and with equivalent bodies in the other Member States concerned as regards actions taken under Article 5.</u></p> <p><u>(b) to forward the biennial statistical returns to the Commission under Article 16(2) of Regulation (EEC) No 3820/85;</u></p> <p><u>(c) to draw up a coherent national enforcement strategy;</u></p>

	<p><u>(d) to be primarily responsible for assisting the competent authorities of other Member States within the meaning of Article 4(6).</u></p> <p><u>The body shall be represented on the Committee referred to in Article 13(1).</u></p>
<b>New paragraph</b>	<p><u>2. Member States shall notify the Commission of the coordinating enforcement body and the Commission shall advise the other Member States accordingly.</u></p>
<b>New paragraph</b>	<p><u>3. 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 13(1) and any such body as the Commission may designate in accordance with the procedure referred to in Article 13(2).</u></p>

<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>
<i>Article 6</i>	<i>Article 8</i>
<p>1. Information made available bilaterally under Article 17(3) of Regulation (EEC) No 3820/85 and Article 19(3) of Regulation (EEC) No 3821/85 shall be exchanged every 12 months beginning six months after notification of this Directive and also upon a specific request by a Member State in individual cases.</p>	<p>1. Information made available bilaterally under Article 17(3) of Regulation (EEC) No 3820/85 <u>or</u> Article 19(3) of Regulation (EEC) No 3821/85 shall be exchanged between the designated coordinating enforcement bodies notified to the Commission in accordance with Article 7(2):</p> <p><u>(a) at least once every three months commencing 1 January 2005;</u></p> <p>(b) upon a specific request by a Member State in individual cases.</p>
<b>New paragraph</b>	<p><u>2. Member States shall establish electronic systems for the exchange of information, using a standard format for ease of comprehension.</u></p>
2. For this purpose, the competent authorities in each Member State shall use a standard	3. To that end, the competent authorities in each Member State <u>may</u> use the standard



reporting form drawn up by the Commission in agreement with the Member States.	reporting form <u>set out in Commission Decision 93/172/EEC or they may designate a common system following consultation with the Commission.</u>
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<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>  <i>Article 9</i>
<b>New paragraph</b>	<u>1. Member States shall introduce a common risk rating system for undertakings based on the number and severity of any infringements of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or Directive 2002/15/EC that an individual undertaking has committed. Undertakings with a high-risk rating shall be checked more closely and more often and, if repeated offences are detected, they shall be more heavily penalised. The criteria and detailed rules for implementing such a system shall be determined by the Commission in accordance with the procedure referred to in Article 13(2), taking into account the extent to which any infringements as referred to in paragraph 4 have been committed..</u>
<b>New paragraph</b>	<u>2. Member States shall include amongst their sanctions the temporary immobilisation of the vehicle, and/or, in the case of passenger transport, they may compel the driver to take a daily rest period, or withdraw, suspend or restrict an undertaking's licence or a driving licence. The use of sanctions shall be effective, proportionate and dissuasive.</u>
<b>New paragraph</b>	<u>3. Member States shall ensure that a system of proportionate financial sanctions is in force if non-compliance with Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or Directive 2002/15/EC on the part of an undertaking, or associated consignors, freight forwarders or sub-contractors, leads to profits.</u>
<b>New Paragraph</b>	<u>4. Member States shall recognise, in particular, each of the following infringements of Regulation (EEC) No 3820/85, Regulation (EEC) No 3821/85 or Directive 2002/15/EC as constituting a</u>

	<p><u>serious offence:</u></p> <p><u>(a) exceeding the maximum daily, six-day or fortnightly driving time limits by a margin of 20% or more;</u></p> <p><u>(b) disregarding the minimum daily or weekly rest period by a margin of 20% or more;</u></p> <p><u>(c) disregarding the minimum break by a margin of 33% or more;</u></p> <p><u>(d) exceeding the maximum weekly working time of 60 hours by a margin of 20% or more.</u></p>
<b>New Paragraph</b>	<p><u>Member States shall notify to the Commission the sanctions laid down for those infringements.</u></p> <p><u>The Commission shall inform the other Member States accordingly.</u></p>

<i>Council Directive 88/599/EEC</i>	<p><i>Proposal</i></p> <p><i>Article 10</i></p>
<b>New Paragraph</b>	<p><u>Member States shall lay down the rules on penalties for infringement of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 16.</u></p>

<i>Council Directive 88/599/EEC</i>	<p><i>Proposal</i></p> <p><i>Article 11</i></p>
<b>New Paragraph</b>	<p><u>Within three years of the entry into force of this Directive, the Commission shall submit to the European Parliament and to the Council a report analysing the penalties set out in the legislation of the Member States for defined offences.</u></p>

<b>New Paragraph</b>	<u>The report shall indicate the degree of difference between the penalties, and to what extent harmonisation of minimum and maximum penalties for a defined offence should be pursued.</u>
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<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>  <i>Article 12</i>
<b>New paragraph</b>	<u>1. In accordance with the procedure referred to in Article 13(2), the Commission shall establish guidelines on best practice in enforcement.</u>  <u>Those guidelines shall be included in the biennial report referred to in Article 16(2) of Regulation (EEC) No. 3820/85.</u>
<b>New paragraph</b>	<u>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 the coordinating enforcement body with their counterparts in other Member States.</u>
<b>New Paragraph</b>	<u>3. If a driver has been on sick leave or annual leave during the period mentioned in the first indent of the first subparagraph of Article 15(7) of Regulation (EEC) No 3821/85, he shall produce a form, duly attested by his employer, if asked to do so by an authorised inspecting officer.</u>  <u>That form shall be drawn up by the Commission in accordance with the procedure referred to in Article 13(2).</u>

<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>  <i>Article 13</i>
<b>New paragraph</b>	<u>1. The Commission shall be assisted by the Committee established by Article 18(1) of Regulation (EEC) 3821/85.</u>

<b>New paragraph</b>	<p><u>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.</u></p> <p><u>The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.</u></p>
<b>New paragraph</b>	<p><u>3. The Committee shall adopt its rules of procedure.</u></p>

<i>Council Directive 88/599/EEC</i>	<p><i>Proposal</i></p> <p><i>Article 14</i></p>
<b><u>New paragraph</u></b>	<p><u>At the request of a Member State or on its own initiative the Commission shall, in accordance with the procedure referred to in Article 13(2), adopt implementing measures, in particular with one of the following aims:</u></p> <p><u>(a) to clarify the provisions of the Directive and to ensure a common approach;</u></p> <p><u>(b) to encourage a coherence of approach between enforcement bodies;</u></p> <p><u>(c) to facilitate dialogue between the industry and enforcement bodies.</u></p>

<i>Council Directive 88/599/EEC</i>	<p><i>Proposal</i></p> <p><i>Article 15</i></p>
<b>New paragraph</b>	<p><u>Amendments to the Annexes which are necessary to adapt them to the developments of best practice shall be adopted in accordance with the procedure referred to in Article 13(2).</u></p>

<i>Council Directive 88/599/EEC</i>	<p><i>Proposal</i></p> <p><i>Article 16</i></p>
<p>Article 7</p> <p>1. With the exception of the Portuguese Republic, Member States shall bring into</p>	<p>1. Member States shall bring into force the laws, regulations and administrative</p>

force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 January 1989 at the latest. The Portuguese Republic shall bring the said laws, regulations and administrative provisions into force on 1 January 1990 at the latest.	provisions necessary to comply with this Directive by <u>1 January 2006</u> at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
2. Member States shall communicate to the Commission their laws, regulations and administrative provisions concerning the application of this Directive.	<u>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</u>
<b>New paragraph</b>	<u>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</u>

<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>  <i>Article 17</i>
<b>New paragraph</b>	<u>Directive 88/599/EEC shall be repealed with effect from the date of entry into force of this Directive.</u>

<i>Council Directive 88/599/EEC</i>	<i>Proposal</i>  <i>Article 18</i>
<b>New paragraph</b>	<u>This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</u>

<i>Council Directive 88/599/EEC</i>  <i>Article 8</i>	<i>Proposal</i>  <i>Article 19</i>
This Directive is addressed to the Member States.	This Directive is addressed to the Member States.

## LEGISLATIVE FINANCIAL STATEMENT

**Policy area(s):** Inland, air and maritime transport

**Activity(Activities):**

**TITLE OF ACTION: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON MINIMUM CONDITIONS FOR THE IMPLEMENTATION OF DIRECTIVE 2002/15/EC AND COUNCIL REGULATION (EEC) NOS 3820/85 AND 3821/85 CONCERNING SOCIAL LEGISLATION RELATING TO ROAD TRANSPORT ACTIVITIES.**

**1. BUDGET LINE(S) + HEADING(S)**

B2-704A

**2. OVERALL FIGURES**

**2.1. Total allocation for action (Part B): € 40 000**

**2.2. Period of application:**

(start and expiry years)

**2.3. Overall multi-annual estimate of expenditure:**

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

€ million *(to three decimal places)*

	Year [n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Commitments	40000						
Payments	40000						

Subtotal a+b							
Commitments	40000						
Payments	40000						

- (c) Overall financial impact of human resources and other administrative expenditure  
(see points 7.2 and 7.3)

Commitments/ payments	43200						
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TOTAL a+b+c							
Commitments	83200						
Payments	83200						

#### 2.4. Compatibility with financial programming and financial perspective

X Proposal is compatible with existing financial programming.

[...] Proposal will entail reprogramming of the relevant heading in the financial perspective.

[...] Proposal may require application of the provisions of the Interinstitutional Agreement.

#### 2.5. Financial impact on revenue:<sup>1</sup>

X Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

[...] Proposal has financial impact – the effect on revenue is as follows:

(€ million to one decimal place)

		Prior to action [Year n-1]	Situation following action					
Budget line	Revenue		[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

### 3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-Compulsory	Differentiated	NO	NO	NO	3

<sup>1</sup> For further information, see separate explanatory note.

#### **4. LEGAL BASIS**

Article 71 of the Treaty

#### **5. DESCRIPTION AND GROUNDS**

##### **5.1. Need for Community intervention <sup>2</sup>**

###### *5.1.1. Objectives pursued*

The purpose of the advisory committee is

- To examine specific enforcement-related issues and make recommendations/decisions.
- Exchange best practice.
- Facilitate a coherent approach to an understanding of the Directive and related Community *acquis* and their enforcement.

###### *5.1.2. Measures taken in connection with ex ante evaluation*

Internal consideration of appropriate issues to be addressed by the group.

###### *5.1.3. Measures taken following ex post evaluation*

Internal assessment of group feedback on the impact of any points agreed.

##### **5.2. Action envisaged and budget intervention arrangements**

— the target population(s) (specify number of beneficiaries if possible)

The European Union road transport industry in general and the drivers of goods and passengers transport by road in particular; the competent enforcement authorities of the Member States.

— the specific objectives set for the programming period (in measurable terms)

The advisory committee will assist in:

- determining (a) any increase in the minimum percentage of checks to be undertaken; (b) an extension of the content of roadside checklist; (c) standard interoperable checking equipment; (d) common undertaking risk assessment criteria; a common approach to holiday/sick leave attestations;
- elaborating an electronic data exchange system;
- identifying best practice; and
- clarifying a common view on the implementation of the rules throughout the Union

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<sup>2</sup> For further information, see separate explanatory note.



The resources to service this Committee in terms of secretariat and meeting arrangements are set out in Points 6 and 7 below. The costs will be met out of current budget lines.

### 5.3. Methods of implementation

Advisory Committee as set out in Commission Decision 1999/468/EC

## 6. FINANCIAL IMPACT

### 6.1. Total financial impact on Part B - (over the entire programming period)

#### 6.1.1. Financial intervention

Commitments (in EUR million to three decimal places)

Breakdown	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Action 1							
Action 2							
etc.							
<b>TOTAL</b>							

#### 6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts	40000						
c) Information and publications							

Subtotal 2	40000						
<b>TOTAL</b>	40000						

## 6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)<sup>3</sup>

Commitments (in EUR million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
	1	2	3	4=(2X3)
<u>Action 1</u> <i>Advisory Group</i>	Advice/Decision	4 meetings p.a.	10000	40000
<b>TOTAL COST</b>				

## 7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

### 7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	0.4		0.4	<i>Servicing the Committee</i>
	B				
	C				
Other human resources					
<b>Total</b>		0.4		0.4	

### 7.2. Overall financial impact of human resources

Type of human resources	Amount (EUR)	Method of calculation *
Officials Temporary staff	43 200	0.4 x 108000 (unit cost) Titles A1, A2, A4, A5 and A7
Other human resources (specify budget line)		
<b>Total</b>	43 200	

The amounts are total expenditure for twelve months.

<sup>3</sup> For further information, see separate explanatory note.

### 7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount EUR	Method of calculation
<b>Overall allocation (Title A7)</b>		
A0701 – Missions		
A07030 – Meetings		
A07031 – Compulsory committees <sup>1</sup>		
A07032 – Non-compulsory committees <sup>1</sup>		
A07040 – Conferences		
A0705 – Studies and consultations		
Other expenditure (specify)		
<b>Information systems (A-5001/A-4300)</b>		
<b>Other expenditure - Part A (specify)</b>		
Total	NIL	

The amounts are total expenditure for twelve months.

<sup>1</sup> Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	EUR 43 200
II.	Duration of action	Indefinite
III.	Total cost of action (I x II)	EUR 43 200

## 8. FOLLOW-UP AND EVALUATION

### 8.1. Follow-up arrangements

Ongoing.

### 8.2. Arrangements and schedule for the planned evaluation

Following quarterly meetings.

## 9. ANTI-FRAUD MEASURES

Cost statements of experts checked for conformity following the Commission rules.

## IMPACT ASSESSMENT FORM

### THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES( SMEs)

#### TITLE OF PROPOSAL

Proposal for a Directive of the European Parliament and of the Council on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulation (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities

#### DOCUMENT REFERENCE NUMBER

#### THE PROPOSAL

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The Community legislation is based on Article 71 of the Treaty. The organisation of the road transport sector is one of the essential factors in the implementation of the common transport policy. The provision of uniform, commonly understood standards in road transport enforcement has become increasingly important given the predominance of this mode of transport within the Community, the liberalisation of market access and the need to ensure there is no distortion of competition between operators. This is especially so given the pending admission of countries from Central and Eastern Europe. The relentless rise in the number of offences detected throughout the Community over the past decade calls for a sufficiently deterrent response in all Member States. Raising the minimum number of checks presents a challenging but achievable target. Promoting a better quality enforcement response through exchange of best practice, joint training programmes and a minimum level of equipment for enforcement staff should be on a Community-wide scale to avoid potential distortions in competition. Enhanced coordination between enforcement agencies both within a Member State and between Member States can only lead to a better overall level of compliance. Determining what constitute serious offences throughout the Community in this field encourages a common approach and prioritisation of resources and lessens disparities between Member States, which could be exploited by unscrupulous operators.

The legislation also reflects the forthcoming introduction of the digital tachograph, which will promote a better respect for the rules in force and facilitate for enforcement agencies and the industry alike an overview of the level of adherence to the rules.

The proposal builds on feedback from the industry, individuals, associations and government experts over the years which have all indicated the need for a better enforcement regime. It also reflects several amendments put forward in the opinion of Parliament at first reading concerning enforcement of Community social rules (see paragraphs 8, 30, 36 and 53 of the Explanatory Memorandum).

## THE IMPACT ON BUSINESS

### 2. *Who will be affected by the proposal?*

#### *– which sectors of business*

The proposal will affect all drivers of vehicles falling within the scope of the Regulation, namely:

- (a) vehicles whose permissible maximum weight exceeds 3.5 tonnes; and
- (b) vehicles used for the carriage of more than 9 passengers including the driver.

Hence most road haulage and passenger transport businesses are affected.

#### *– which sizes of business (what is the concentration of small and medium-sized firms)*

According to a 1995 report prepared by the social partners at European level, there are about 1.2 million jobs in passenger transport and some 2.1 million jobs in road haulage for hire or reward with 3-3.5 million in own account transport. According to a Eurostat report (4/2000), within the Union an average of 3.3 persons are employed in a road transport company. The concentration of SMEs in the road transport sector is very high.

#### *– are there particular geographical areas of the Community where these businesses are found*

In terms of employees, half the Member States have companies employing on average between 1 and 5 persons. These Member States tend to be on the periphery of the Union, e.g. Sweden, Finland, Ireland, or are Mediterranean countries, e.g. Spain, Italy, or Greece. The highest average number of employees is found in BENELUX, France, Germany and the UK.

### 3. *What will business have to do to comply with the proposal?*

The transport operator will have to organise his business in such a way that the rules on working time and maximum driving times, breaks and minimum rest periods are respected. For those who have already been doing so there should be no significant change as the basic rules on daily driving times remain unchanged. However the sectoral rules on working time will be introduced for mobile workers by 23 March 2005, which may involve a rescheduling of driver working hours. Enforcement of these new rules will force employers to be more mindful of their responsibilities.

### 4. *What economic effects is the proposal likely to have?*

#### *– on employment*

The position of law-abiding operators will be strengthened, and they may well see their market share grow. From a road safety point of view, encouraging adherence to the rules should also ensure excessive fatigue does not impair a driver's performance and may therefore enhance the quality of service delivered. More widespread

compliance with the rules will make the profession of a road transport driver more attractive.

– *on investment and the creation of new businesses*

The realisation that the social rules will be more frequently enforced will make transport operators and drivers more wary of breaking the rules and may encourage investment of time and money in the logistics end of their enterprise. The prospect of a roadside check may have to be taken into account in timetable scheduling.

– *on the competitiveness of businesses*

The aim of the Directive is to enhance enforcement of social rules. This will facilitate a level playing field, reducing uncertainty in how the rules are enforced during international journeys across the Union. It will act as a deterrent to those firms that go beyond the law and thereby undercut their competitors.

5. *Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?*

The proposal does not contain specific measures to this effect as the majority of undertakings are already within this category and are aware of the current rules.

## CONSULTATION

6. *List the organisations that have been consulted about the proposal and outline their main views.*

The current proposal draws on the results of a questionnaire circulated to all Member States in 1998 on initiatives to promote effective and efficient enforcement. The need to increase the overall level of checks, to address the issue of training and promote better co-operation, coordination and exchange of best practice between Member States was acknowledged. The need for an initiative on determining common priorities and what constitute serious offences throughout the Union was emphasised by some.

The views of enforcement officers were sought: the Euro Control Route organisation, comprising enforcement agencies from eight Member States – UK, IRL, F, D, Benelux and E – forwarded comments from several Member States. While largely in agreement with the majority of the proposals, concerns centred on the practicality of major increases in roadside checks, for NL on the inclusion of checks on working time rules and for the UK on a different measure of success than a simple increase in checks. Given the significance attached by Member States to adequate enforcement of working time during Council discussions on the sectoral working time Directive, the Commission takes the view that the opportunity to introduce a harmonised approach to the enforcement of working time provisions should not be side-stepped.

The social partners' informal views on a revision of the Directive were taken into account during initial drafting of the proposal. However, the Sectoral Social Dialogue Committee's proposed official joint response, following a subsequent official consultation on 24 January 2003, has yet to be forthcoming.

Finally, the views of the European Parliament as expressed through its opinion delivered on 14 January 2003<sup>1</sup> on Commission proposal COM(2001) 573 final are taken into account within the body of the proposal.

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<sup>1</sup> See footnote 20.