



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.6.2005
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2003/0255 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
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**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the 35 amendments proposed by Parliament.

2. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2003)628 final - 2003/0255(COD))	2 December 2003
Date of the opinion of the European Economic and Social Committee	3 June 2004
Date of the opinion of the European Parliament following first reading	20 April 2004
Date of adoption of the Common Position by qualified majority	9 December 2004
Date of adoption of the resolution at second reading by the European Parliament comprising 35 amendments to the Common Position	13 April 2005

3. PURPOSE OF THE PROPOSAL

The Commission proposal seeks to improve enforcement of Community social rules by increasing the quantity of checks, improving the quality of enforcement activity and addressing the issue of a harmonised approach to infringements and sanctions.

In terms of increasing the quantity of checks, the Commission proposed raising the minimum percentage to 3% immediately, with a greater percentage of such checks being carried out at

the premises (at least 50% as opposed to the current 25%) and at the roadside (at least 30% as opposed to the current 15%). In terms of concerted checks, the Commission proposed to increase the minimum from two to six per year, to encourage greater cooperation and exchange of best practice between enforcement authorities.

To enhance the quality of enforcement activities, the Commission proposed minimum training and equipment for enforcement staff, the development and implementation of a national enforcement strategy by Member States, the designation of a co-ordinating body to oversee this strategy and liaise with enforcement authorities of other Member States. In terms of road infrastructure, sufficient parking areas were to be put in place to allow drivers to rest and to facilitate roadside checks. In terms of co-operation between Member State enforcement authorities, a committee would be established to facilitate exchange of best practice, prepare common rules on risk assessment of undertakings for targeting enforcement operations, agree on uniform documentation concerning proof of sick and annual leave and the criteria for a common electronic exchange of information and intelligence. Joint training sessions were also envisaged.

As regards a common approach to infringements and sanctions, the Commission proposed that Member States make available to their enforcement authorities the temporary immobilisation of a vehicle, along with other specified sanctions. Proportionate financial sanctions were proposed for those in the transport chain where non compliance of these rules has led to profits for them. A common list of serious infringements was set out, for which Member States were to notify the sanctions laid down. The Commission would then draw up a report analysing the penalties set out for serious infringements and concluding on the extent to which they should be harmonised.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

4.1. Amendments accepted by the Commission

Overall the Commission can accept 26 amendments out of a total of 35. 20 amendments are acceptable as they stand: 1, 3, 4, 5, 6, 8, 9, 10, 14, 20, 21, 22, 23, 24, 25, 26, 29, 32, 36 and 37.

Four amendments are acceptable in principle or subject to redrafting: 2, 27, 31 and 35; two amendments are acceptable in part: 15 and 17.

4.1.1 Amendments accepted subject to redrafting

Amendment 2 advocates interoperability and practicability in monitoring systems. In terms of enforcement officer equipment and electronic exchange of intelligence, interoperability is highly desirable. The objective would need redrafting to highlight the need for coordination at EU level through the proposed comitology procedure, as follows:

Recital 5(a).

“The interoperability and practicality of national monitoring systems should be facilitated through the Committee procedure referred to in Article 12;”

Amendment 35 includes checks on weekly and fortnightly driving limits at the roadside, which the Commission strongly supports, particularly as a logical consequence of the introduction of the digital tachograph. Mention of checks of the preceding 28 days would have to be redrafted to take account of the staged approach to this provision, as follows:

Annex I, Part A, point (1)“(1) daily *and weekly* driving periods, *total accumulated driving time during two consecutive weeks*, breaks and daily and weekly rest periods *and compensatory rest periods*; also the preceding [...] 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 for the same period on the driver card and/or in the memory of the recording equipment in conformity with Annex II to this Directive and/or on printouts [...].

4.1.2 Amendments accepted in principle

Amendment 27 states that repeated offences should be more heavily penalised. The Commission could support this logical approach, as follows:

Article 9, paragraph 2

“2. Undertakings with a more high-risk rating shall be checked more closely and more often, and, *if repeated infringements are detected, a proportionate sanction shall be applied.*”

Amendment 31 sets out in detail what the Commission’s report on penalties for serious infringements should include. The issue raised in the amendment could form part of a more general aim of the report, but should not restrict it to this aspect, as follows:

Article 10, paragraph 1 a (new)

“The report shall include divergences between penalties and the impact of harmonisation of such penalties on enforcement and road safety.”

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4.1.3 Amendments accepted in part

Both **amendments 15** and **17** go into an excessive amount of detail.

Amendment 15 requires enforcement staff at roadside checks to specify where their checks are carried out which might compromise their inspection regime. Moreover they are to demand information from the driver that he might not know (number of vehicles owned by the company). However the Commission could support noting the country of registration of the vehicle and country of origin of the driver and undertaking which could help inform enforcement operations, and serve to ensure non-discrimination. The revised text reads as follows:

Article 3, paragraph 1, point (a), point (i)(a) (new)

“(i)(a) *country of registration of the vehicle inspected, country of origin of the driver and of the undertaking;*

Amendment 17 lists a series of places for checks. The Commission could accept ‘service stations’ and ‘other safe locations’ which could indeed cover the other examples given. The revised text reads as follows:

Article 4, paragraph 2, point (a)

(a) sufficient provision is made for checkpoints on or nearby existing and planned roads ***and, in particular, that service stations and other safe locations along motorways can function as checkpoints*** ;

4.2. Amendments rejected by the Commission

Nine amendments are rejected, as they raise issues of clarity and practicality: 7, 11, 12, 13, 16, 18, 28, 30 and 34.

Amendment 7 sets out the type of journeys to which this Directive should apply. There is no need to include this provision, as the minimum enforcement conditions contained in the proposed Directive are dependent on the scope laid out in the related Community legislation, namely, Regulations (EEC) 3820/85 and 3821/85 as well as Directive 2002/15/EC. **Amendments 11 and 12** introduce more ambitious deadlines for the staged increase in the percentage of checks. The Commission prefers a set of more realistic and achievable deadlines to enable all Member States to respect the rules.

While **Amendment 13** seeks an immediate increase in the number of checks at company premises from 25% to 50% of all checks undertaken, the Commission prefers a more managed approach and one that includes an increase in the minimum percentage of roadside checks from 15% to 30%.

Amendments 16 and 18 introduce an unnecessary burden on undertakings and enforcement officers respectively. The former requires undertakings to keep records of checks they have experienced over the previous year – the added value of this requirement is questionable. Those undertakings who wish to demonstrate that they have already been sanctioned for an offence detected during roadside checks will have doubtless kept a record. However an undertaking will not always be in a position to hold a comprehensive database, if their driver decides to pay the fine and not declare it. Likewise, the latter amendment obliges enforcement officers to maintain a balance in the intensity of their roadside checks. Just what ‘balance’ means is unclear; moreover if rigidly interpreted, it could interfere with the proper discretion of enforcement officers in carrying out their duties.

Amendment 28 runs counter to the principle of extraterritoriality in terms of sanctions introduced by the proposed new Regulation on driving times and rest periods. It returns to the largely ineffective and rarely used current system of exchange of information on infringements detected.

Amendment 30 advocates that the Commission make a proposal to harmonise penalties for serious infringements following its report on this issue. The Commission considers that this amendment would unduly restrict the right of initiative of the Commission.

Amendment 34 removes the provision enabling the Community to negotiate primarily within the context of the AETR agreement to ensure similar enforcement standards are also applied beyond the Union’s borders. This would be a step backwards.

5. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.