



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 September 2003 (03.09)  
(OR. fr)**

**12168/03**

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**Interinstitutional File:  
2001/0241 (COD)**

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**TRANS 208  
CODEC 1112  
SOC 324**

**PROPOSAL**

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from : Commission  
dated : 12 August 2003  
Subject: Amended proposal for a Regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport

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Delegations will find attached a Commission proposal submitted under a covering letter from Ms Patricia BUGNOT, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

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Encl.: COM(2003) 490 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.8.2003  
COM(2003) 490 final

2001/0241 (COD)

Amended proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the harmonisation of certain social legislation relating to road transport and  
amending Council Regulation (EEC) 3821/85 on recording equipment in road transport**

(presented by the Commission pursuant to Article 250 (2)  
of the EC-Treaty)

## **EXPLANATORY MEMORANDUM**

### **A. Principles**

On 12 October 2001 the Commission submitted to the Council a proposal for a Regulation on the harmonisation of certain social legislation relating to road transport. (COM(2001) 573 final – 2001/0241(COD))<sup>1</sup>

On 29 May 2002 the Economic and Social Committee adopted a favourable opinion.

On 14 January 2003 the European Parliament delivered its opinion in first reading on the Commission's proposal. The Parliament adopted 69 amendments of which the Commission agreed to accept 22 in full, 9 with redrafting, 8 in principle and 8 in part. This position is reflected in the changes made to the amended proposal.

A number of amendments (10, 11, 60, 63 and 70(a-d)) which were accepted in principle seek to strengthen enforcement of this legislation's provisions. The Commission will take them up in a separate proposal to revise Directive 88/599/EEC on standard checking procedures<sup>2</sup>. Other amendments (62, 70(e) and 9 in part) relate to the provisions of Regulation (EEC) 3821/85<sup>3</sup> as amended and will be incorporated into that Regulation via this Regulation.

The Commission is also taking the opportunity in amending its proposal to make some further modifications, firstly to render the incorporation of some parliamentary amendments coherent with other parts of the proposal, particularly in respect of the re-integration of the calendar week system, and secondly, to clarify further certain elements in its original proposal, especially in the light of discussions to date in the Council.

### **B. Explanation of Amendments**

Out of the 69 amendments adopted by the European Parliament, the Commission has accepted 47. They have been incorporated as follows:

#### **I      Amendments accepted**

##### **Recitals**

1. Recital 3, which sets out the problem areas encountered in the current Regulation, has been expanded to include difficulties in monitoring the Regulation (Amendment 2).
2. Recitals 9, 10 and 11 deal with the AETR<sup>4</sup> agreement. The Commission has accepted the rewording of the text in Recital 9, and the requirement in Recital 11 that any incoherence between Community rules and the AETR be swiftly addressed. (Amendments 3 and 4)

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<sup>1</sup> OJ C 51, 26.2.2002, p. 234.

<sup>2</sup> OJ L 325, 29.11.1988, p. 55.

<sup>3</sup> OJ L 370, 31.12.1985, p. 8.

<sup>4</sup> European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of 1 July 1970

3. Recital 13 now includes the explicit aim for the Member State enforcement authorities meeting in standing committee to reach a common understanding of how to implement the Regulation (Amendment 5)
4. Recital 17 amplifies the need for roadside enforcement to ensure that the rules are kept by those vehicles from outside the Member State (Amendment 7)

### **Article 1**

5. Article 1 now reflects the fact that the Regulation's objectives include the promotion of improved monitoring and enforcement practice as well as improved working practices within the industry. (Amendment 12) Examples of the former include the introduction of extraterritoriality in roadside enforcement and of the latter the compulsory introduction of tachographs within national regular passenger transport sector.

### **Article 2**

6. Article 2(1) now widens the scope of application to include international point to point delivery services, where the permissible maximum weight of the vehicle exceeds 2.8 tonnes (Amendment 14). Local or regional courier or express delivery services were considered an area best regulated at national level in accordance with the principle of subsidiarity. However for long distance international delivery services, the Commission could accept a modest extension of the scope of the Regulation on road safety grounds. Moreover it is noted that already one Member State already applies this lower weight criterion on a general basis (Germany).
7. Article 2(2) now states that for vehicles registered in a non-AETR third country, the Regulation's provisions shall apply. The need to ensure no distortion of competition within the Union is pre-eminent and should be reflected in the provisions of the Regulation (Amendments 15 and 16). The AETR agreement's rules are now limited to vehicles registered in those third countries party to the agreement which enter the Union.

### **Article 3**

8. The exemption for vehicles used for civil, armed and fire services has been clarified still further by limiting it to those activities which are strictly for the purpose concerned and to ensure that there is control over their use. (Amendment 18).
9. The proposed radius within which the exemption for breakdown vehicles can operate has been extended from 50km to 100km (Amendment 21). This appears to be a compromise that is acceptable to the industry while dealing with the issue of long-distance breakdown operations.
10. A new exemption for historic commercial vehicles is inserted to clarify the current application of exemptions to this area. While the former general exemption under Art. 4(12) might exempt goods vehicles, individual Member States have been obliged to apply for a national derogation under Art. 13(2) for vintage passenger vehicles. This anomaly is now clarified (Amendment 17).

## Article 4

11. In Art.4(1), the Commission has accepted Amendment 25 in part, by excluding those journeys made entirely on site. For those that either start or finish on site but otherwise use a public road, however, the Commission maintains the view that these vehicles should come within the ambit of the Regulation.
12. In Art.4(2), the Commission accepts that there is no justification to restrict the definition to mechanically self-propelled vehicles and so has deleted this phrase (Amendment 26). Should a Member State wish to promote the use of alternative energy-based vehicles, a distance-and weight-limited national derogation exists in the proposed Article 13(e).
13. In Art.4(3), the Commission accepts that the definition of a driver should be restricted to a person carried in the same vehicle (Amendment 28). The enforcement issue of drivers switching vehicles in a convoy, or driving out to take over a lorry on route would not be resolved or easily checked by maintaining the proposed definition of carriage in any vehicle. The Commission does not however consider that intention to drive should have to be proven, and will retain the original phraseology.
14. The Commission has decided to accept the argument put forward both by the Parliament and by a majority of Member States in Council discussions for the inclusion of a definition of driving time (Amendment 29) in a new paragraph, Art. 4(4). The activity of driving to a location to take up a vehicle is not included, as the Skills court case<sup>5</sup> considered this activity as ‘other work’.
15. The definition of ‘break’ in Art. 4(5) has been extended to clarify its primary purpose of recuperation (Amendment 30).
16. The definition of the regular daily rest period in renumbered Art. 4(8) has been revised to re-introduce the possibility of a limited split daily rest. (Amendments 31 and 42) The reintroduction of this flexibility should not lead to difficulties in enforcement.
17. The definition of a weekly rest period in renumbered Art.4(9) is modified to correspond to the re-introduction of a fixed calendar week basis for calculations where a weekly rest period can straddle two calendar weeks (Amendment 32). The Commission has decided in view of representations from the industry and in order to assure no regression in working conditions for drivers to reintroduce the possibility of a reduction to 36 consecutive hours at base or in the driver’s home town and of 24 hours away from base with compensation (Amendment 78 in part). However in order to ensure that enforcement is facilitated and that sufficient account is taken of accumulated fatigue, compensation is to be taken en bloc by the end of the week following that in which the reduced weekly rest commenced. (see renumbered Art 8(8) and Amendment 45).

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<sup>5</sup> Case 297/99 Skills Motor Coaches Ltd., 18.01.2001

18. The system of calculating driving times and rest periods returns to a calendar week basis to facilitate coherence with the working time Directive 2002/15/EC<sup>6</sup>. (Amendments 1 and 37). References to the flexible week have been therefore deleted.
19. As regards the definition of multi-manning in renumbered Art.4(15), the Commission has accepted that in practice there may be occasions where the second driver is picked up shortly after the journey is started and is prepared to accept the flexibility inherent in Amendment 34. As this only relates to a short time at the start of the journey, there should be no difficulty in enforcement.

## **Article 8**

20. Amendments 41 and 43 are accepted to clarify the text of paragraphs 2(1) and 4. The Commission also takes on board amendments 44 and 45 in paragraphs 7 and 8, which reintroduce respectively a provision to take account of the calendar week system and compensation for weekly rest. (see commentary in paragraphs 17 and 18 above). Recital 15 has been amended accordingly.
21. Amendment 107 excludes the possibility in renumbered Art. 8(6) of taking weekly rest in a stationary vehicle. The Commission has accepted this in part by adopting the compromise solution of proposing that only reduced weekly rest taken away from base could be spent in the vehicle. It is primarily during this shorter period away from base that drivers might need to exercise this option and vehicle design in this respect has improved considerably over the past 17 years.

## **Article 9**

22. The Commission is prepared to accept that for practical reasons and in the specific situations outlined in this Article only, a maximum of two interruptions in a regular daily rest period could be permitted (Amendment 47).

## **Article 10**

23. In renumbered paragraph 7, the Commission has accepted the principle in Amendment 48 subject to redrafting, that those who impose impossible schedules upon drivers causing them to infringe the provisions of this Regulation as well as those who accept such schedules should also bear a measure of responsibility. The provision also reflects that found in Article 14(3) of Directive 2002/15/EC and to that extent maintains coherence in social legislation in this area.

## **Article 11**

24. The Commission accepts Amendment 51 in part by deleting the phrase that could have caused distortion of competition.

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<sup>6</sup> OJ L 80, 23.3.2002, p. 35

## **Article 12**

25. The Commission accepts that Amendment 52 introduces an appropriate obligation to complete the special arrangement provision, which will ensure a timely update of the record of driving times, breaks and rest periods and also facilitate enforcement.

## **Article 13**

26. Amendment 53 for Art.13(1)(b) is accepted, as it clarifies the purpose of the derogation and excludes such vehicles from being used for other road transport activities. The Commission also recognises the need for a limited derogation for local postal services to be excluded as set out in Amendment 54, where driving is not the driver's main activity. To ensure a level playing field, the agreed term of universal service provider as defined in the Postal Directive 97/67/EC is used.

## **Article 19**

27. The Commission accepts that, particularly with the introduction of the principle of extraterritoriality in sanctioning offences detected, it is necessary to stipulate that sanctions should be non-discriminatory (Amendment 64 in part). Recital 24 is therefore also amended to take this into account. The word 'penalties' has been replaced by 'sanctions', a more general term, which found greater acceptance in Council discussions.

## **Article 20(new)**

28. The Commission has made a separate Article to address this specific enforcement measure. The Commission can accept the clarification of the limits to the sanction but would prefer to make reference to the simpler description for the sanction, namely immobilisation (Amendment 65).

## **Article 21 (renumbered)**

29. The Commission would wish to be included in the exchange of information on interpretation and application of the Regulation. For this reason, a separate paragraph 3 is used to incorporate the substance of Amendment 66.

## **II Amendments to Regulation (EEC) 3821/85**

Amendment 62 advocates the introduction of a requirement to keep or retain for one year all data and information relating to driving times and rest periods. This requirement is already applied to duty rosters (Article 14 (6) of Regulation 3820/85) and to analogue tachograph record sheets (Article 14 (2) of Regulation 3821/85). Within the amending Regulation (EC) 2135/98, which introduced the digital tachograph, the Council at that time considered that arrangements for downloading of data should remain a national competence and hence in Article 1(7)(b) paragraph 5, Member States are simply obliged to ensure that this data should be made available for at least 365 days after the date of their recording. Amendment 62 seeks to make this record-keeping explicitly compulsory for undertakings regarding future digital tachograph data. Given that the digital tachograph equipment also allows downloaded data to be transmitted electronically and stored in a central database base, the text has been revised to take this facility into account. A new paragraph (8) has been inserted in Article 10 of the proposed Regulation rather than Regulation 3821/85, within the

framework of the chapter on liability of the undertaking. An associated definition of downloading has been added to ensure coherence with that used in Annex IB of Regulation (EEC) 3821/85. An additional recital (28) is added to cover this insertion.

The Commission also recognises the need to ensure there is an explicit obligation upon the undertaking to download data from the vehicle unit and driver card so that it can be accessible for inspection. Minimum compulsory downloading periods may vary between Member States, but the main aim should be to require an accessible and continuous record for periodic inspections. However the possibility is given for Member States' experts to discuss and agree in committee on an optimum minimum compulsory downloading period.

### **Article 25 (renumbered)**

While the Commission's proposed new Article 10(8) deals with downloading and storage of electronic data, (see paragraph 36 above) there is also a need to deal with the issue of storage of printouts from the tachograph, which the driver makes when he has been unable to use his driver card. This is a further aspect of Amendment 62, which also considered all "information" should be retained for one year. This issue is best addressed within the framework of the current requirements for record sheets in Article 14(2) of Regulation 3821/85. Accordingly, the relevant provision is changed to include appropriate and chronological storage of all such records. This insertion is also reflected in a new Recital (28).

Amendment 70(e) advocates the insertion of an explicit requirement for the driver when returning to a vehicle after an absence (normally a daily or weekly rest) to declare any other work carried out or 'availability' undertaken since he left the vehicle by entering it manually in the digital tachograph. To this end, Article 15(2) of Regulation (EEC) 3821/85 is replaced to make clear that manual entry of such activities is compulsory. This requirement is also reflected in Recital (28).

Amendments 9 and 70(a) both seek to extend the number of preceding days in which enforcement officers may check driving time and rest periods to 28 and 27 respectively, so that full advantage may be taken of the data available through the digital tachograph equipment. Currently, under Article 15(7) of Regulation 3821/85 as amended and under Article 3(2), first indent of Directive 88/599/EEC<sup>7</sup>, if there are clear indications of irregularities, enforcement officers can check the records for the preceding days of the same week and the last day on which the driver drove on during the previous week. The Commission has accepted the fact that advantage should be taken of the forthcoming new tachograph equipment, but considers an obligatory four-week period check at the roadside excessive. Inspectors conducting roadside checks should continue to have a measure of discretion. The number of days to be checked should however be adjusted to ensure that the fortnightly driving time limit of 90 hours can be checked at the roadside. This recognises the potential enforcement improvements which the digital tachograph can provide, does not impose too great an additional burden on inspectors and the industry alike, but allows a key limit on driving time to be checked at the roadside. Recital 28 also addresses this change.

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<sup>7</sup> OJ L 325, 29.11.1988, p. 55

### **III Amendments rejected**

30. The Commission has not accepted Amendments 6, 8, and 9 in part as they would impose an unreasonable administrative burden both on the industry and enforcement inspectors.
31. Amendments 13, 35, 49 and 89 appear to serve little useful purpose. The sectoral working time Directive 2002/15/EC stands on its own and reflects the diverse way in which such rules are implemented in the Union. It already places an obligation on employers to acquaint themselves with total time worked by drivers. As regards the minimum ages for drivers these are now in the driver training proposal – Parliament has not objected in first reading to its logical presence there. As regards consistency of this proposal with Regulation (EEC) 3821/85 on recording equipment in road transport, the Commission will ensure that this is maintained throughout discussions on the proposal.
32. The Commission maintains its view that a more focussed approach to exemptions and derogations is required. Humanitarian aid (amendment 19) is too broad a concept and can be subcontracted to commercial undertakings; privatised utilities and services or those services in which private companies compete, continue to be subject to competitive pressures (Amendments 20, 24, 55, 56, 58); milk collection from farms can involve long distance transport (Amendment 23). Amendment 59 on the carriage of live animals is already covered in a more limited form by the revised derogation in Article 13(1)(b) that includes ‘farming’. There appears to be no justification for a derogation for specially equipped vehicles for use as shops, etc. (Amendment 57). Amendment 22 to exclude certain vehicles under 3.5 tonnes appears unnecessary as these vehicles are already outside the scope of the Regulation. While the Commission seeks to limit exemptions and derogations primarily to those justified on account of the light weight of the vehicles, the short distance travelled or on public interest grounds, it recognises a certain flexibility is required in applying these exemptions and derogations in practice.
33. Amendment 83 is rejected as it reduces the current break in Article 7 from 45 minutes to 30 minutes after 4 hours 30 minutes. The Commission considers the current 45 minutes is an appropriate minimum break and that any reduction would not improve road safety.
34. Amendment 39 is rejected as it reduces the inclusion of other driving activities undertaken on excluded vehicles within the calculation of daily driving time to urban buses. While mixed scope driving may be more frequent within this sector, there is no logical reason why it alone should be singled out and mixed scope driving with other excluded vehicles considered acceptable.
35. In Amendment 61, the requirement for national regular bus services to fit their vehicles with a digital tachograph when it becomes compulsory, while laudable, is impracticable. Firstly Regulation (EC) 2135/98 requires only new vehicles to be fitted with a digital tachograph. There is no obligation to equip existing fleets. Moreover, given the date for the introduction of the digital tachograph – 5 August 2004 – this provision would leave little room for a transitional period.

36. Amendments 67 and 69 make proposals which conflict with the comitology rules and hence have to be rejected, while the means to address Amendment 68 – a uniform interpretation and application of the Regulation’s rules – is already provided through the proposed committee in Arts. 23 and 24.

#### **IV New Commission Amendments to the proposal**

##### **Article 3**

37. The introductory phrase has been clarified as ‘carriage by road’ to correspond to the definition in Article 4(1).

Paragraph 9: to ensure consistency in terms used, the weight threshold is changed from kilogrammes to tonnes – see also paragraph 63 of the explanatory memorandum.

##### **Article 4**

38. Paragraph 4: the definition of ‘break’ has been further refined to clarify the nature of a break by explicitly excluding any possibility that it includes any driving activity. This reflects a consensus in Council discussions to date.

39. Paragraph 6: the definition of ‘other work’ has been linked to the definition of ‘work’ in the sectoral working time Directive, 2002/15/EC. This provides coherence between the two legislative instruments and a clear explanation. By contrast, the former interpretation did not seek to define the term, but simply stated what it did not include.

40. Paragraph 11: the definition of daily driving time has been clarified to make it more precise.

41. Paragraph 16: the definition of transport undertaking has been clarified to indicate that it includes both companies which undertake transport for hire and reward as well as those who carry out own account operations.

##### **Article 6**

42. Paragraph 2 has been extended to ensure there is no misunderstanding in the relationship between the Regulation and Directive 2002/15/EC concerning the maximum weekly driving time limit of 56 hours and the maximum weekly working time limit of 60 hours and to promote coherence between the two legal instruments.

43. Renumbered paragraph 5: discussions in the Council have indicated a consensus on a clearer and more comprehensive text concerning out of scope driving, which can be taken into account in driving time. The Commission can agree with this approach on road safety grounds and hence takes up this consensus in its amended proposal.

## **Article 7**

44. The Commission continues to consider 45 minutes as a reasonable break after 4.5 hours of driving. The aim of the Commission's original proposal regarding breaks was to avoid an abuse of current facility to split the 45-minute break into 15-minute periods. The aim of Parliament's amendment 83 is to ensure that any reintroduction of a 15-minute split should only be permitted if it precedes a rest of at least 30 minutes. The Commission has redrafted the text to reflect this objective. Recital 14 has also been amended to reflect this change.

## **Article 8**

45. Paragraph 2 is amended to make clear the obligation on the driver to take a daily rest.

46. Paragraph 3 is amended to take account of the anomaly in a calendar week system that driving the last three days of one week and the first three days of the following week can allow a continuous use of reduced daily rest over this 6-day period, a situation that would go against the spirit of what the Regulation intends.

47. The new paragraph 5 reflects the provision of the current Regulation and reintroduces considerable flexibility for the industry in the allocation of the weekly rest periods. It means firstly that the possibility of taking reduced weekly rest periods consecutively is reintroduced - the road safety implications are recognised through the shorter period required for compensatory rest in paragraph 8, a period that also facilitates enforcement checks. Secondly, it means that with a weekly rest period at the start of the first week and the second weekly rest period at the end of the following week, drivers can operate for longer periods within an overall driving time limit of 90 hours. This may address to some extent the concerns of the occasional passenger transport industry, which up until now has made use of a special arrangement under which the driver could drive for 12 days without any weekly rest.

The former paragraph 5 is deleted because the reinstatement of a compensation regime for weekly rest in the new paragraph 8 with a requirement that the compensation be taken by the end of the following week has the same effect. Compensation given the following week for a 24-hour reduced weekly rest period will add up to a minimum of 45 hours in total (if the subsequent weekly rest period is also reduced) or to 66 hours (if a regular weekly rest period is taken).

## **Article 10**

48. Paragraph 3 is redrafted to clarify that a new infringement is not being created by driving on the territory of a Member State having breached the rules in force. Rather the concept of extraterritoriality in roadside enforcement is being introduced. Discussions in Council to date have also indicated that Member States could accept a longer period within which such infringements could be checked and action taken. This is reflected in the new text. The issue of double jeopardy – being sanctioned twice for the same offence - is also addressed in a supplementary paragraph.

## **Article 11**

49. The Commission has added an additional sentence based on the current Regulation which underlines the primacy of the Regulation in international road transport operations.

### **Article 12**

50. The Commission has inserted an additional phrase to reflect the future use of the digital tachograph in recording such events.

### **Article 13**

51. Sub-paragraph 1(c) and (e) contain a minor amendment changing the weight limit to tonnes from kg to ensure consistency within the Regulation. Upon reflection following discussions within the Council, the Commission has accepted the need for two derogations: firstly, to retain a more circumscribed derogation for minibuses (paragraph 1(h)); secondly, for areas where population density is particularly sparse, other road users less prevalent and hence road safety less an issue (new paragraph 3), the Commission is prepared to recognise and authorise a special derogation in specific well-justified cases.

### **Article 16**

52. Paragraph 3 is slightly amended to clarify the requirements concerning the duty roster.

### **Article 23**

53. The Commission recognises that there is no need to define the composition of this Committee as it will be subject to the normal rules of comitology.

### **Article 24**

54. The remit of the committee has been tightened up and clarified.

### **Article 25**

Within the modifications of Regulation (EEC) 3821/85, the Commission has decided to include an additional entry that has arisen in the course of Council discussions on the proposal, namely an additional paragraph to be inserted in Article 15(1) of that Regulation. Currently drivers are obliged to make a printout of their driving and other activities at the end of the day and then sign and identify the printout. The additional paragraph places a further requirement on a driver who does not have a driver card prior to starting his journey to make a printout. This will prevent end-of-day printouts being juggled prior to signature by unscrupulous companies to ensure records of driving time activities are legal, and will link a driver with a vehicle for a particular journey. Moreover drivers are likely to make this printout because of the risk of a roadside check. The potential benefits in enforcement are deemed to outweigh the burden of the additional requirement and will encourage drivers to take care of their driver cards. The insertion of this additional requirement is reflected in the new Recital 28.

## **C Conclusion**

Having regard to Article 250, paragraph 2 of the EC Treaty, the Commission modifies its proposal as follows.

Amended proposal for a

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the harmonisation of certain social legislation relating to road transport and amending Council (EEC) Regulation 3821/85 on recording equipment in road transport**

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>8</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>9</sup>,

Having regard to the opinion of the Committee of the Regions<sup>10</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>11</sup>,

Whereas:

- (1) In the field of road transport, Regulation (EEC) No 3820/85 on the harmonisation of certain social legislation relating to road transport<sup>12</sup> sought to harmonise the conditions of competition between methods of inland transport, especially with regard to the road sector and the improvement of working conditions and road safety. Progress in these areas must be safeguarded and extended.
- (2) Article 17a(2) of Directive 93/104/EC<sup>13</sup> concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council<sup>14</sup>, requires Member States to adopt measures to ensure that mobile workers are entitled to “adequate rest”.
- (3) Difficulties have been experienced in interpreting, applying, and enforcing and monitoring certain provisions of Regulation (EEC) No. 3820/85<sup>15</sup> on driving time, break and rest period rules for drivers engaged in national and international road transport within the Community in a uniform manner in all Member States, because of the broad terms in which they are drafted.

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<sup>8</sup> OJ C ...., ..., p. ....

<sup>9</sup> OJ C ...., ..., p. ....

<sup>10</sup> OJ C ...., ..., p. ....

<sup>11</sup> OJ C ...., ..., p. ....

<sup>12</sup> OJ L 370, 31.12.1985, p. 1.

<sup>13</sup> OJ L 307, 13.12.1993, p. 18.

<sup>14</sup> OJ L 195, 1.8.2000, p. 41.

<sup>15</sup> OJ L 370, 31.12.1985, p. 1.

- (4) Effective and uniform enforcement of those provisions is desirable so as to achieve their objectives and not to bring the application of the rules into disrepute. Therefore a clearer and simpler set of rules is needed, which will be more easily understood, interpreted and applied by the road transport industry and the enforcement agencies.
- (5) Measures provided for in this Regulation regarding working conditions cannot be allowed to prejudice the right of the two sides of industry to lay down, by collective bargaining or otherwise, provisions more favourable to workers.
- (6) It is desirable to define clearly the precise scope of this Regulation by specifying the main categories of vehicle included.
- (7) Full definitions of all key terms should be given in order to render the interpretation easier and ensure that the Regulation is applied in a uniform manner.
- (8) The provisions of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1 July 1970 (AETR), as amended, should continue to apply to the carriage by road of goods and passengers by vehicles registered in any Member State or any country which is a contracting party to the AETR, for the whole of the journey where that journey is between the Community and a country which is a contracting party or through such a country;
- (9) In the case of **carriage using** vehicles registered in a **third country** which is not a contracting party to AETR, ~~the~~<sup>ose</sup> provisions **of this Regulation should**~~will only~~ apply to that part of the journey effected within the Community.
- (10) Since the subject matter of the AETR Agreement falls within the scope of this Regulation, the power to negotiate and conclude the Agreement lies with the Community.
- (11) If an amendment to the internal Community rules in the field in question necessitates a corresponding amendment to the AETR, Member States will act together to bring about such an amendment to the AETR **as soon as possible** in accordance with the procedure laid down therein.
- (12) The list of exemptions should be updated to reflect developments in the road transport sector over the past seventeen years.
- (13) The basic rules on driving time need to be clarified and simplified to allow effective and uniform enforcement by means of the digital tachograph as set out in Regulation (EEC) 3821/85 on recording equipment in road transport<sup>16</sup> as amended by Regulation (EEC) 2135/98<sup>17</sup>. **In addition, through the standing committee, Member State enforcement authorities will strive to reach a common understanding on the implementation of this Regulation.**
- (14) It has proved possible under existing rules to schedule daily driving periods and breaks to enable a driver to drive for too long without a full break, leading to reduced road safety and a deterioration in driver's working conditions. It is therefore appropriate to

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<sup>16</sup> OJ L 370, 31.12.1985, p. 8.

<sup>17</sup> OJ L 274, 9.10.1998, p. 1.

**ensure split breaks are so ordered as to prevent abuse** introduce a longer minimum break, which must be taken within a shorter time period.

- (15) Current compensation periods for reduced rest periods, both daily and weekly, have been found to be so flexible and varied as to be practically unenforceable. In order to simplify the scheme, a new balance should be found which retains flexibility but provides a better standard for the driver and is computable. Standard daily rest periods should be increased and ~~split periods of rest should not be permitted. R-~~ reduced **daily** rest periods should be left without compensation, and **Compensation for weekly reduced rest periods should be given at the end of the following week, permitted only once between two full weekly rest periods.**
- (16) Many road transport operations within the Community involve transport by ferry or by rail for part of the journey. Clear, appropriate provisions regarding daily rest periods and breaks should therefore be laid down for such operations.
- (17) In view of the increase in cross-border carriage of goods and passengers, it is desirable in the interests of road safety and enhanced enforcement for roadside checks to cover driving times and rest periods undertaken within other Member States or third countries **and determine whether they have been fully and properly observed.**
- (18) Liability of transport undertakings should apply at least to transport undertakings that are legal or natural persons, and should not exclude proceedings against natural persons who are perpetrators, instigators or accessories to infringements of this Regulation
- (19) It is necessary for drivers working for several transport undertakings to supply each one with adequate information to enable it to fulfil its responsibilities under this Regulation.
- (20) In order to promote social progress and improve road safety, each Member State must retain the right to adopt certain appropriate measures.
- (21) National derogations should reflect changes in the road transport sector and be restricted to those elements not now subject to competitive pressures.
- (22) The Member States should lay down rules for vehicles used for the carriage of passengers on regular services where the route covered does not exceed 50km. Those rules should provide adequate protection in terms of driving times allowed and breaks and rest periods imposed.
- (23) It is desirable in the interests of effective enforcement that all regular national and international passenger transport services should be checked using the standard recording device.
- (24) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate, ~~and dissuasive~~ **and non-discriminatory.** The possibility of **immobilising** ~~bounding~~ the vehicle where serious infringements are detected should be included within the common range of penalties open to Member States.

- (25) It is desirable in the interests of clear and effective enforcement to ensure uniform provisions on the liability of transport undertakings and drivers for breaches of the measures provided for in this Regulation. This liability may result in penal, civil or administrative sanctions as may be the case in the Member States.
- (26) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of laying down clear common rules on driving times and rest periods for drivers in road transport cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for co-ordinated transnational action, be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (27) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>18</sup>, measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.
- (28) **Regulation (EEC) 3821/85 should be amended to clarify specific obligations on transport undertakings and drivers as well as to promote legal certainty and to facilitate enforcement of driving time and rest period limits at roadside checks.**
- (289) For reasons of clarity and rationalisation, Regulation (EEC) No 3820/1985 should be repealed and replaced by this Regulation.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### Introductory provisions

#### Article 1

This Regulation lays down rules on driving time, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between methods of inland transport, especially with regard to the road sector and to improve working conditions and road safety.

**The Regulation's provisions also aim to promote improved monitoring and enforcement practice by Member States and improved working practices within the road transport industry.**

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<sup>18</sup> OJ L 184, 17.7.1999, p. 23.

## Article 2

1. This Regulation shall apply to carriage by road:
  - (a) of goods where the permissible maximum weight of the vehicles, including any trailer, or semi-trailer, exceeds 3.5 tonnes, and in the case of international point-to-point delivery services where the permissible maximum weight of the vehicle exceeds 2.8 tonnes, or
  - (b) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.

It shall apply to vehicles registered in the Community where the carriage by road is undertaken:

- (a) entirely within the Community; or
- (b) between the Community and a third country which is not a contracting party to the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) or passes through such a country.

2. This Regulation shall apply to carriage by road undertaken by vehicles registered in a third country, which is not a contracting party to the AETR, for the whole of the journey made within the Community.
2. 3. The AETR shall apply where carriage by road is undertaken by: vehicles registered in any Member State or any country which is a contracting party to the AETR, for the whole of the journey where that journey is between the Community and a country which is a contracting party, or through such a country.; or
- (b) by vehicles registered in a third country which is not a contracting party to the AETR, for the whole of the journey made within the Community.

## Article 3

Without prejudice to Article 6(6), this Regulation shall not apply to carriage by road by:

1. vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;
2. vehicles with a maximum authorised speed not exceeding 30 kilometres per hour;
3. vehicles owned or hired ~~in~~without a driver by the armed services, civil defence, fire services, and forces responsible for maintaining public order when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control;
4. vehicles used in emergencies or rescue operations;
5. specialised vehicles which are owned or hired ~~in~~without a driver by the State and used for medical purposes;

6. specialised vehicles transporting circus and fun-fair equipment;
7. specialised breakdown vehicles operating within a ~~50~~100-km radius of their base;
8. vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;
9. vehicles with a maximum permissible weight not exceeding ~~7.500 kg~~ tonnes used for non-commercial carriage of goods.

## **10. Historic commercial vehicles used for the non-commercial carriage of goods or passengers**

### Article 4

For the purposes of this Regulation the following definitions will apply:

1. “carriage by road” means any journey made entirely or in part on open roads by a vehicle, whether laden or not, used for the carriage of passengers or goods;
2. “vehicle” means a motor vehicle, tractor, trailer or semi-trailer, defined as follows:
  - “motor vehicle”: any ~~mechanically~~-self-propelled vehicle circulating on the road, other than a vehicle permanently running on rails, and normally used for carrying passengers or goods;
  - “tractor”: any ~~mechanically~~-self-propelled vehicle circulating on the road, other than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines;
  - “trailer”: any vehicle designed to be coupled to a motor vehicle or tractor;
  - “semi-trailer”: a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle;
3. “driver” means any person who drives the vehicle even for a short period, or who is carried in ~~the same~~-vehicle in order to be available for driving if necessary;
- 4. “driving time” means the duration of the activity in which the driver controls the vehicle and is an active road user. It includes interruptions in the motion of the vehicle when the driver is still behind the steering wheel.**
- 5.4. “break” means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation.**
- 65. “other work” means any activity other than driving defined in Article 3(a) of Council Directive 2002/15/EC as being ‘working time’.~~which is not rest, a break or driving. Waiting time and time not devoted to driving spent in a vehicle in motion, a ferry, or a train shall also not be regarded as ‘other work’.~~**

76. "rest" means any uninterrupted period during which the driver may freely dispose of his time.

87. "daily rest period" means the daily period during which the driver may freely dispose of his time and covers a "regular daily rest period" or a "reduced daily rest period".

"regular daily rest period" means any uninterrupted period of rest of at least 12 hours. **This regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and a second uninterrupted period of at least 9 hours.**

"reduced daily rest period" means any uninterrupted period of rest of at least 9 hours but less than 12 hours.

98. "weekly rest period" means ~~at the weekly~~ period during which the driver may freely dispose of his time and covers a "regular weekly rest period" or a "reduced weekly rest period".

- "regular weekly rest period" means any uninterrupted period of rest of at least 45 hours.
- "reduced weekly rest period" means any uninterrupted period of rest of **less than 45 hours, which may be shortened to a minimum of 36 consecutive hours if at least 24 hours but less than 45 hours, which is taken other than at the place where the vehicle is normally based or in the driver's home town, or to a minimum of 24 consecutive hours, if taken outside those places.** where the driver is based.

109. A "flexible 'week'" means the period of time between **00.00 on Monday and 24.00 on Sunday** ~~the end of one weekly rest period and the beginning of the next weekly rest period.~~

110. "daily driving time" means the total accumulated driving time between **the end of one daily rest period and the beginning of the following daily rest period** ~~any two consecutive daily rest periods~~ or between a daily rest period and a weekly rest period.

124. "weekly driving time" means the total accumulated driving time during a week.

132. "permissible maximum weight" means the maximum authorised operating weight of the vehicle fully laden;

143. "regular passenger services" means national and international services as defined in Article 2 of Council Regulation (EC) n° 684/92<sup>19</sup>.

154. "multi-manning" - a driver is engaged in multi-manning a vehicle if there is, during all periods of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, at least one other driver on the vehicle **to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory.**

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<sup>19</sup> OJ L 74, 20.3.1992, p. 1, as amended by Council Regulation (EC) No. 11/98, OJ L 4, 8.1.1998, p. 1.

**165.** “transport undertaking” means any natural person, any legal person, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such a personality which engages in carriage by road, **whether for hire and reward or for own account**.

## CHAPTER II

### Crew, driving times, breaks and rest periods

#### Article 5

1. The minimum age for conductors shall be 18 years.
2. The minimum age for driver's mates shall be 18 years. However, Member States may reduce the minimum age for drivers' mates to 16 years provided that
  - (a) the carriage by road is carried out within one Member State within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centres of which are situated within that radius,
  - (b) the reduction is for the purposes of vocational training, and
  - (c) there is compliance with the limits imposed by the Member State's national law on employment matters.

#### Article 6

1. The daily driving time shall not exceed nine hours.  
However, the daily driving time may be extended to at most 10 hours not more than twice during the ~~flexible~~-week.
2. ~~The flexible week shall not exceed 144 hours.~~
- 23.** The weekly driving time shall not exceed 56 hours **and shall not result in the maximum weekly working time as laid down in Article 4(a) of Directive 2002/15/EC being exceeded.**
- 34.** The total accumulated driving time during any two consecutive ~~flexible~~-weeks shall not exceed 90 hours.
- 45.** Daily and weekly driving times shall include all driving time on the territory of the Community or of a third country.
- 56.** ~~A driver of a vehicle within the scope of this Regulation who also drives between two daily rest periods or between a daily and weekly rest period a vehicle coming within the exemptions set out in Article 3 or derogations provided for in Articles 13 and 14 shall record the total daily driving time.~~

When a driver of a vehicle to which this Regulation applies, between two consecutive daily rest periods or between a daily and a weekly rest period, also:

(a) drives a vehicle benefiting from an exemption under Article 3 or a derogation under Articles 13 and 14 and/or;

(b) drives a vehicle used for the carriage of goods, where the permissible maximum weight of the vehicle does not exceed 3.5 tonnes;

the total driving time shall count towards the driver's daily and weekly driving time limits for the purposes of Article 4 and the preceding paragraphs of the present Article, and shall be recorded manually on a record sheet or printout.

## Article 7

1. After at most ~~three~~four and a half hours of driving a driver shall observe a break of at least ~~30~~45 minutes unless he begins a rest.
2. This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of paragraph 1. However, this break may be observed after at most four and a half hours of driving if the break is prolonged to at least 45 minutes unless the driver begins a rest.

## Article 8

1. A driver shall take daily and weekly rest periods.
2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period ~~a~~A driver must have takenshall complete a new daily rest period ~~not later than 24 hours after the end of the previous daily rest period or weekly rest period.~~

If the portion of the daily rest period which is contained in the 24 hour period is at least 9 hours but less than 12 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.

3. A driver may have at most three reduced daily rest periods between any two weekly rest periods. ~~during a flexible week.~~
4. By way of derogation from paragraph 2, within 30 hours after the end of a daily or weekly rest period, a driver engaged in multi-manning must have takenshall complete a new daily rest period.
5. In the course of each week, one of the daily rest periods shall be extended to become a weekly rest period.
5. ~~A driver shall commence a new regular weekly rest period not later than 13 consecutive periods of 24 hours after the end of the previous regular weekly rest period.~~

6. Daily **rest periods** and **reduced** weekly rest periods **away from base** may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.
7. **A weekly rest period that falls in two weeks may be counted in either week, but not in both.**
8. **A driver taking a reduced weekly rest period shall take an additional period of rest corresponding to the difference between 45 hours and the length of the reduced weekly rest taken. This additional period of rest:**
  - shall be taken en bloc;**
  - shall be taken by the end of the week following the week in which the reduced weekly rest commenced;**
  - shall be attached to either a weekly rest period or a daily rest period.**

#### Article 9

1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than ~~twice~~<sup>one</sup> by other activities not exceeding one hour in total.
2. During the regular daily rest period mentioned in paragraph 1 the driver shall be able to have access to a bunk or couchette.

### CHAPTER III

#### Liability of the undertaking

#### Article 10

1. A transport undertaking shall not give drivers employed or put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety.
2. A transport undertaking shall organise the work of drivers referred to in paragraph 1 in such a way that the drivers are able to comply with Chapter II of this Regulation and Council Regulation (EEC) No. 3821/85. The transport undertaking shall properly instruct the driver and shall therefore make regular checks to ensure that Chapter II of this Regulation and of Regulation (EEC) n° 3821/85 are complied with.
3. **A Member State shall impose a sanction on an undertaking and/or a driver for any infringement of this Regulation detected on its territory and for which a sanction has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.**

**A Member State shall take due account of any evidence supplied by the undertaking and/or the driver that an infringement has already been subject to a sanction or that an infringement is already the subject of judicial proceedings.**

~~It shall be an infringement for a driver to breach the rules set out in Chapter II in whole or in part on the territory of a Member State. It shall be an infringement to drive on the territory of a Member State having breached those rules at any time since the driver's most recent weekly rest period, even if the driver was not present on that Member State's territory at the time of that breach of the rules.~~

4. Transport undertakings established in a Member State shall be liable for infringements referred to in paragraph 3 committed by drivers for the benefit of those undertakings even if the driver was not present on its territory at the time of the infringement.
5. A transport undertaking shall not be liable under paragraph 4 if it proves that -
  - (a) the infringement was due to the fact that the driver had failed to comply with the instructions given to him by that transport undertaking; or
  - (b) it was not aware and could not reasonably become aware that the driver had been employed or was at the disposal of several employers and was thereby subject to several sets of instructions which would cause him to breach the rules set out in Chapter II.
6. A driver who is employed or at the disposal of more than one transport undertaking shall provide sufficient information to each undertaking to enable them to comply with Chapter II.
7. **Consignors, freight forwarders, prime contractors, sub-contractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect the provisions of this Regulation.**
- 8(a). **A transport undertaking which uses vehicles fitted with recording equipment in compliance with Annex IB of the Regulation (EEC) 3821/85 as last amended and falling within the scope and provisions of this Regulation, shall:**
  - i. **ensure that all relevant data is downloaded from the vehicle unit and driver card as regularly as is stipulated by the Member State of establishment of the transport undertaking or as regularly as necessary so as to ensure that all activities undertaken by or for that undertaking are downloaded;**
  - ii. **ensure that all data downloaded from both the vehicle unit and driver card is kept for at least twelve months following its recording and, should an inspecting officer request it, such data must be accessible, either directly or remotely, at the premises of the undertaking.**

**(b). ‘Downloading’ within this paragraph corresponds to the definition laid down in Commission Regulation (EC) No.1360/2002 of 13 June 2002<sup>20</sup>, Chapter I (Definitions), paragraph (s)**

**(c). The minimum period within which the relevant data should be downloaded under paragraph (a)(i) above may be decided by the Commission in accordance with the advisory procedure referred to in Article 23(2).**

## CHAPTER IV

### Exceptions

#### Article 11

A Member State may apply higher minimum breaks and rest periods or lower maximum driving times than those laid down in Articles 6 to 9 inclusive to carriage by road undertaken wholly within its territory, ~~by vehicles registered in that Member State~~. **Nevertheless the provisions of this Regulation shall remain applicable to drivers engaged in international transport operations.**

#### Article 12

Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from the provisions of Articles 6 – 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the nature of the reason for such departure from the provisions on the record sheet of the recording equipment **or on a print-out from the recording equipment or in the duty roster at the latest on arrival at the suitable stopping place.**

#### Article 13

1. Provided the objectives set out in Article 1 are not prejudiced, each Member State may grant exceptions on its own territories or, with the agreement of the States concerned, on the territory of another Member State from Articles 5 - 9 applicable to carriage by the following:

- (a) vehicles owned or hired without a driver by public authorities to undertake carriage by road which do not compete with private transport undertakings;
- (b) vehicles used by agriculture, horticulture, forestry, farming or fishery undertakings for carrying goods **as part of their own entrepreneurial activity** within a 50 kilometre radius of the base of the undertaking;

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<sup>20</sup> OJ L 207, 5.8.2002, p.1

- (c) vehicles with a maximum permissible weight not exceeding 7.5 ~~tonnes 00 kg~~  
used by universal service providers as defined in Article 2(13) of Directive 97/67/EC to deliver items as part of the universal service or used for  
carrying material or equipment for the driver's use in the course of his work,  
These vehicles should be used only within a 50-kilometre radius of the base of the undertaking, and on condition~~provided~~ that driving the vehicles does not constitute the driver's main activity;
- (d) vehicles operating exclusively on islands not exceeding 2300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles;
- (e) vehicles used for the carriage of goods within a 50-km radius of the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible weight of which, including the weight of trailers or semi-trailers, does not exceed 7.5 tonnes 00 kg;
- (f) vehicles used for driving instruction with a view to obtaining a driving licence, provided that they are not being used for the commercial carriage of goods or passengers;
- (g) vehicles used in connection with sewerage, flood protection, or water services, highway maintenance and control, or door-to-door household refuse collection or disposal services;
- (h) vehicles with between 10 and 17 seats used exclusively for the carriage of passengers, provided that they are being used by non-commercial bodies for social purposes.

2. Member States shall inform the Commission of the exceptions granted under paragraph 1 and the Commission shall inform other Member States thereof.

3. Provided that the objectives in Article 1 are not jeopardised and adequate protection for drivers is provided, a Member State may, after approval by the Commission, grant on its own territory minor exemptions from this Regulation for vehicles used in predefined areas with a population density of less than 5 persons per square kilometre, in the following cases:

- for domestic regular passenger services, where their schedule is confirmed by the authorities, exemptions relating to breaks, and
- for those domestic road haulage operations, which have no impact on the single market and are needed to maintain certain sectors of industry in the territory and where the exempting provisions of this Regulation impose a limiting radius of up to 100 km.

Carriage by road under this derogation may include a trip to a more inhabited area only in order to end or start the journey. Any such measures should be proportionate in nature and scope.

## Article 14

Provided that the objectives set out in Article 1 are not prejudiced, Member States may, after authorisation by the Commission, grant exceptions from the application of Articles 6 - 9 of this Regulation to transport operations carried out in exceptional circumstances.

In urgent cases they may grant a temporary exception for a period not exceeding 30 days, which shall be notified immediately to the Commission.

The Commission shall inform the other Member States of any exception granted pursuant to this Article.

## Article 15

Member States shall ensure that drivers of vehicles stipulated in Article 3(1) shall be covered by national rules which provide adequate protection in terms of driving times allowed and breaks and rest periods imposed.

# CHAPTER V

## Control procedures and penalties

### Article 16

1. Where no recording equipment has been fitted to the vehicle in accordance with Regulation (EEC) 3821/85, the provisions set out in paragraphs 2 and 3 of this Article shall apply until 31 December 2006 to:
  - (a) regular national passenger services, and
  - (b) regular international passenger services whose route terminals are located within a distance of 50 km as the crow flies from a frontier between two Member States and whose route length does not exceed 100 km.
2. A service timetable and a duty roster shall be drawn up by the transport undertaking and shall show, in respect of each driver, the name, place where he is based and the schedule laid down in advance for various periods of driving, other work, breaks and availability.

Each driver assigned to a service referred to in paragraph 1 shall carry an extract from the duty roster and a copy of the service timetable.

3. The duty roster shall
  - (a) include all the particulars specified in paragraph 2 for a minimum period covering the previous 28 days; these particulars must be updated on regular intervals, the duration of which may not exceed one month.
  - (b) be signed by the head of the transport undertaking or by a person authorised to represent him, and
  - (c) be kept by the transport undertaking for one year after expiry of the period covered by it. The transport undertaking shall give an extract from the roster to the drivers concerned upon request.
  - (d) ~~The duty roster shall, be produced and handed over at the request of an authorised inspecting officer, be produced and handed over.~~

### Article 17

Member States, using the standard form set out in Commission Decision 93/173/EEC<sup>21</sup>, shall communicate the necessary information to the Commission to enable it to draw up every two years a report on the application of this Regulation and Regulation (EEC) 3821/85 and developments in the fields in question.

This information must reach the Commission not later than 30 September of the year following the end of the two-year period concerned.

The Commission shall forward the report to the European Parliament and to the Council within 13 months of the end of the two-year period concerned.

### Article 18

Member States shall adopt such measures as may be necessary for the implementation of this Regulation.

### Article 19

Member States shall lay down rules on ~~penalties~~ sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those ~~penalties~~ sanctions must be effective, proportionate—and dissuasive and non-discriminatory. These ~~penalties~~ sanctions may be civil, administrative or criminal in nature.

~~The penalties shall include the possibility of impoundment of the vehicle for serious infringements.~~

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<sup>21</sup> OJ L 72, 25.3.1993, p. 33.

## Article 20

**Where Member States consider that there has been a breach of this Regulation liable to endanger road safety, they shall be empowered to proceed with immobilisation of the vehicle concerned until such time as the cause of the breach has been rectified.**

## Article 210

1. Member States shall assist each other in applying this Regulation and in checking compliance therewith.

They shall inform the Member State in which the transport undertaking concerned is established of any breach of the rules set out in Chapter II committed on or outside their territory, including any breach which occurred prior to the most recent weekly rest period.

Such information shall be provided within a reasonable time period and shall include information about any penalties imposed.

2. The competent authorities of the Member States shall regularly send one another all available information concerning:
  - (a) breaches of the rules set out in Chapter II committed by non-residents and any penalties imposed for such breaches ;
  - (b) penalties imposed by a Member State on its residents for such breaches committed in other Member States.

3. **The competent authorities of the Member States shall regularly send each other and the Commission all relevant information concerning the national interpretation and application of the provisions of this Regulation.**

## Article 224

The Community shall enter into any negotiations with third countries, which may prove necessary for the purpose of implementing this Regulation.

## Article 232

### **Committee procedures**

1. The Commission shall be assisted by the committee referred to in Article 18(1) of Regulation 3821/85.; it shall be composed of representatives of the Member States and chaired by a representative of the Commission.
2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

## Article 243

### Implementing measures

1. ~~Member States may bring any question concerning the implementation of this Regulation to the attention of the Commission. Appropriate decisions shall be adopted in accordance with the advisory procedure referred to in Article 22(2).~~
21. At the request of a Member State or on its own initiative the Commission shall:
  - (a) examine cases where differences in the application and enforcement of any of the provisions of the Regulation arise and particularly concerning driving times, breaks and rest periods;
  - (b) clarify the provisions of the Regulation and ensure a common approach;
  - (c) In these specific cases ~~concerning driving times, breaks and rest periods~~ the Commission shall take a decision in accordance with the advisory procedure referred to in Article 232(2). The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.
32. Without prejudice to Article 226 of the Treaty, any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of two months.

## CHAPTER VI

### Final provisions

#### Article 25

Regulation (EEC) 3821/85, as amended by Regulation (EEC) 2135/98 is amended as follows:

(i) Article 14, paragraph 2 is amended as follows:

'The undertaking shall keep record sheets and printouts in chronological order and in a legible form for at least a year after their use and shall give copies to the drivers concerned who request them. The record sheets and printouts shall be produced or handed over at the request of any authorised inspecting officer.'

(ii) in Article 15(1), the following fifth sub-paragraph is added:

'Where a driver card is damaged, malfunctions or is not in the possession of the driver, the driver shall:

i. at the start of his journey, print out the details of the vehicle he is driving, and shall enter onto that printout:

- a. details that enable him to be identified (name, driver's card or driver's licence number), including his signature;
  - b. the periods indicated in paragraph 3, second indent (b), (c) and (d) below.
- ii. at the end of his journey, print out the information relating to periods of time recorded by the recording equipment, record any periods of non-driving activity carried out since the printout that was identified (name, driver's card or driver's licence number), including his signature.

(iii) Article 15(2), second paragraph is replaced by the following:

'When as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the periods of time indicated in paragraph 3, second indent (b), (c) and (d) below shall:

- i. if the vehicle is fitted with recording equipment in conformity with Annex I, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet; or
- ii. if the vehicle is fitted with recording equipment in conformity with Annex IB, be entered onto the driver card using the manual entry facility provided in the recording equipment.'

(iv) Article 15(7), first indent, is modified as follows:

"- the record sheets for the current day and those used by him in the previous consecutive fifteen days."

Article **264**

Regulation (EEC) 3820/85 is repealed.

Article **275**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities* Union.

It shall apply from January 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

# LEGISLATIVE FINANCIAL STATEMENT

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

**Activity(ies):**

**TITLE OF ACTION: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
THE HARMONISATION OF CERTAIN SOCIAL LEGISLATION RELATING TO ROAD  
TRANSPORT**

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

06 01 04 03

**2. OVERALL FIGURES**

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

**2.2. Period of application: indefinite – annual expenditure**

**2.3. Overall multiannual estimate on expenditure:**

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

	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						
TOTAL a+b+c							
Commitments	83200						
Payments	83200						

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

Proposal compatible with the existing financial programming

This proposal will entail reprogramming of the relevant heading in the financial perspective

This may entail application of the provisions of the Inter-institutional Agreement.

#### 2.5 Financial impact on revenue<sup>22</sup>

No financial implications (involves technical aspects regarding implementation of a measure)

OR

Financial impact – the effect on revenue is as follows:

Note: All details and observations pertaining to the method of calculating the effect on revenue should be included in a separate annex

		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						

*(Please state each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line)*

<sup>22</sup> For further information see a separate guidance paper.

### 3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA participation	Participation applicant countries	Heading Financial Perspective
Non-Compulsory	Differentiated	NO	NO	NO	3

### 4. LEGAL BASIS

Article 71 of the Treaty

### 5. DESCRIPTION AND GROUNDS

#### 5.1 Need for Community intervention <sup>23</sup>

##### 5.1.1 *Objectives pursued*

The purpose of the advisory committee is

- to ensure a common application and enforcement of the Regulation by the competent authorities of Member States;
- to promote an exchange of views on developments in this field of the road transport sector; and
- to raise issues relating to the Regulation that can be addressed in a more thorough and decisive way within the committee.

The desired outcome is a more effective and uniform application of the rules throughout the Union and a proactive approach to developments arising in the sector

##### 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 Actions envisaged and arrangements for budget intervention

- *the target population(s) (specify number of beneficiaries if possible);*

the European Union road transport industry in general and the drivers of goods and passenger transport by road in particular.

- *the specific objectives set for the programming period (in measurable terms);*

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<sup>23</sup> For further information see a separate guidance paper.

The advisory committee will assist in:

- drawing up the biennial reports which the Commission must produce under Article 16(2) of the Regulation – up until now input from Member States to such reports has been patchy and late thus reducing the impact and value of the reports;
- clarifying a common view on the implementation and enforcement of the rules throughout Member States;
- advising on refinements to the Community legislation in the light of current operations; and
- highlighting developments in the sector that have a bearing on the implementation of the Regulation and associated legislation.

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 the 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**

*(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2. )*

#### *6.1.1 Financial intervention*

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>24</sup>

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated. ).

Commitments in €

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>	<i>Advice/decision</i>	<i>4 meeting p.a.</i>	<i>10000</i>	<i>40000</i>
<b>TOTAL COST</b>				<b>40000</b>

If necessary explain the method of calculation

## 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		
Permanent officials or Temporary staff	A B C	0.4		0.4	<i>Servicing the Committee</i>
Other human resources					
Total		0.4		0.4	

<sup>24</sup> For further information see a separate guidance paper.

## 7.2 Overall financial impact of human resources

Type of human resources	Amount €	Method of calculation *
Officials		
Temporary staff	43200	0.4 x 108,000 (unit cost), Titles A1, A2, A4, A5 and A7
Other human resources (give budget line)		
Total	43200	

The amounts reflect the total cost of the posts for 12 months as the operation is of unspecified duration

## 7.3 Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	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 (state which)		
<b>Information systems (A-5001/A-4300)</b>		
<b>Other expenditure – Part A (state which)</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)	€ 43200
II. Duration of action	Indefinite
III. Total cost of action (I x II)	€ 43200

The above mentioned estimates have been included in the Preliminary Draft Budget 2004.

**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