



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

on the implementation in

**1991-1992 of Regulation (EEC) No 3820/85
on the harmonization of certain social legislation
relating to road transport**

**(17th report by the Commission on the implementation
of the social legislation relating to road transport)**

INTRODUCTION

The European social legislation relating to road transport cannot attain its objectives of social progress, harmonization of conditions of competition and improved road safety unless these rules, which focus primarily on driving time and drivers' rest periods, are implemented effectively and duly monitored by the Member States.

For this reason, from the outset Regulation No 543/69¹ called on the Member States to supply the Commission with data on the measures taken to implement and monitor compliance with the rules laid down therein so that the Commission could compile an annual report.

When Regulation No 543/69 was replaced by Regulation No 3820/85² this obligation was retained in Article 16, except that since then the report covers a two-year period.

This report marks a break with the earlier Commission reports on the implementation of the social legislation relating to road transport, in that it is the first report exclusively on Regulation No 3820/85. It is also the first based on the standard form introduced by the Decision of 22 February 1993.

This makes it particularly difficult to establish a trend in implementation of this legislation. Most of the data gathered here cannot be compared with the earlier figures.

Moreover, although most Member States submitted their data in a format close to the standard form, they are still not yet uniform and some of the data submitted were fragmentary, incomplete or for the wrong reference period. Also, in some cases it took time to make the transition.

The principal headings in this report cover the checks, the different types of offence, the penalties, the national regulatory and administrative initiatives, cooperation between the Member States and, finally, comments by the Member States and the Commission on implementation of this legislation.

¹ OJ No L 77, 29.3.1969, p. 49.

² OJ No L 370, 31.12.1985, p. 1.

1. Reference period

From 1 January 1991 to 31 December 1992.

2. Calculation of minimum checks to be carried out
(Article 2 of Directive 88/599/EEC)

Member State	Number of days worked per driver during the reference period - a -	Total number of vehicles subject to Regulation (EEC) No 3820/85 (annual average) - b -	Total number of days worked a x b - c -	Minimum checks (1% of c) - d -
Belgium	440	150.200	66.088.000	660.880
Denmark	440	40.000	17.600.000	176.000
Germany	480	776.536	372.737.280	3.727.372
Greece (*)	528	7.300	3.854.400	38.544
Spain	480	350.957	168.459.360	1.684.593
France	480	521.875	250.500.000	2.505.000
Ireland	460	48.180	22.162.800	221.628
Italy	465(**)	705.000	327.825.000	3.278.250
Luxembourg	432	9.482	4.096.224	40.962
Netherlands	443	103.400	45.806.200	458.062
Portugal	465(**)			
United Kingdom	465(**)	437.500(***)	203.437.500	2.034.375

(*) From 1 January 1990 to 31 December 1991.

(**) Average value as no figure was submitted.

(***) Excluding vehicles registered in Northern Ireland.

Note

In the case of Germany, vehicles from the former German Democratic Republic were included in 1992 but not in 1991, consequently raising the number of vehicles covered by the Community social legislation from 666 213 to 886 858.

3. Checks

3.1 Number of checks at the roadside

(Italy supplied no data and is not included in this table. The figures for Greece are for the period from 1 January 1990 to 31 December 1991.)

Member State	Type of operation	EEC		Third countries	Total non-national ⁽¹⁾
		nationals	other Member States		
Belgium	carriage of passengers	2.648	5.389	188	
	carriage of goods	36.820	75.393	2.817	
Denmark	carriage of passengers	(2)			
	carriage of goods				
	total value	128.809			
Germany ⁽⁴⁾	carriage of passengers				
	carriage of goods				
	total value	575.053			506.991
Greece	carriage of passengers	75.673 (2)		8	
	carriage of goods	207.598		11	
Spain	carriage of passengers (3)	29.159	5.656	369	
	carriage of goods	387.671	70.671	3.559	
France	carriage of passengers	22.650			21.769
	carriage of goods	446.407			102.741
Ireland	carriage of passengers	10.862			1.326
	carriage of goods	49.601			8.888
Luxembourg	carriage of passengers	328	1.351	6	
	carriage of goods	3.309	6.223	89	
Netherlands	carriage of passengers	3.456	758	78	
	carriage of goods	115.390	29.577	2.059	
Portugal	carriage of passengers	2.311			84
	carriage of goods	34.262			517
United Kingdom	carriage of passengers	58.870			4.610
	carriage of goods	537.320			44.320

Notes:

- (1) Where the Member States were unable to supply more detailed figures.
- (2) EEC total, including nationals.
- (3) From 1 January to 31 December 1992.
- (4) BAG figures (excluding checks by the Länder). The increase in the vehicle fleet following unification pushed up the number of checks on nationals from 258 848 in 1991 to 316 205 in 1992. Naturally, the increase for non-nationals was less marked, from 235 997 in 1991 to 270 994 in 1992.

3. Checks

3.2. Number of drivers checked at premises of undertaking

Member State	Carriage of passengers	Carriage of goods	Carriage on own account	Carriage for hire or reward
Belgium	102	2.193		
Denmark	36	84		
Germany	n.c.			
Greece (*)	992	2.961		
Spain		90.214		
France	9.307	78.655	4.706	80.680
Ireland	n.c.			
Italy	n.c.			
Luxembourg	548	3.451	18	53
Netherlands	540	9.671	2.315 (**)	7.356 (**)
Portugal	114	1.773		
United Kingdom	8.560	66.550		

(*) From 1 January 1990 to 31 December 1991.

(**) Goods only.

3. Checks

3.3 Number of working days checked at the roadside

(Italy supplied no data and is not included in this table. The figures for Greece are for the period from 1 January 1990 to 31 December 1991.)

Member State	Type of transport	EEC		Third countries	Total non-nationals ⁽¹⁾
		nationals	other Member States		
Belgium	carriage of passengers	6.821	14.941	650	
	carriage of goods	101.435	251.517	10.501	
Denmark	carriage of passengers carriage of goods total value	515.236 ⁽²⁾			
Germany ⁽³⁾	carriage of passengers carriage of goods total value	1.725.159			1.520.973
Greece	carriage of passengers	5.119 ⁽²⁾		6	
	carriage of goods	14.558		7	
Spain	carriage of passengers (3)	87.477	16.900	1.100	
	carriage of goods	1.163.013	212.000	10.600	
France	carriage of passengers	63.898			27.146
	carriage of goods	1.337.791			312.638
Ireland	carriage of passengers	8.300			1.129
	carriage of goods	77.685			7.579
Luxembourg	carriage of passengers	887	507	29	
	carriage of goods	9.387	16.740	248	
Netherlands	carriage of passengers	8.640	1.544	546	
	carriage of goods	288.475	64.677	14.413	
Portugal	carriage of passengers	7.066			240
	carriage of goods	64.847			1.248
United Kingdom	carriage of passengers	184.250 ⁽⁴⁾			
	carriage of goods	1.663.460			

Notes:

- (1) Where the Member States were unable to supply more detailed figures.
- (2) EEC total, including nationals.
- (3) From 1 January to 31 December 1992.
- (4) Nationality not specified.
- (5) Estimate based on BAG figures (excluding checks by the Länder).

3 Checks

3.4. Number of working days checked at premises of undertaking

Member State	Carriage of passengers	Carriage of goods	Carriage on own account	Carriage for hire or reward
Belgium	985	98.320		
Denmark	3.725	17.500		
Germany	n.c.			
Greece ^(*)	6.751	23.361		
Spain		413.826 ⁽¹⁾		
France	119.651	842.347	52.011	909.987
Ireland	69.465	1.174.174		
Italy	42.858	430.870		
Luxembourg	2.532	28.214	1.575	2.811
Netherlands	5400	154.039	23.150 ^(**)	130.889 ^(**)
Portugal	6.590	27.007		
United Kingdom	191.030	1.611.660		

^(*) From 1 January 1990 to 31 December 1991.

^(**) Goods only.

Note:

(1) From 1 January to 31 December 1992.

Comments

In Denmark the number of working days checked at premises of undertakings was well below the 25% of all working days checked called for by Directive 88/599 of 23 November 1988. Belgium also fell short of this quota.

3. Checks

3.5. Number of days actually checked as a proportion of the minimum number of working days to be checked

Member State	- a - Minimum number of working days to be checked	- b - Number of working days checked (national)	- c - Number of working days (non-national)	- d - Total number of working days checked	- e - Number of working days checked as a proportion of the minimum number of days to be checked (d/a)
Belgium	660.880	207.561	277.609	485.170	73 %
Denmark	176.000			536.461	305 %
Germany ⁽¹⁾	3.727.372	1.725.159	1.520.973	3.246.132	87 %
Greece ⁽¹⁾	38.544			49.802	129 %
Spain	1.684.593			1.904.916	113 %
France	2.505.000	2.363.687	339.784	2.703.471	108 %
Ireland	221.628			1.338.332	604 %
Italy	n.c.				
Luxembourg	40.962			58.544	143 %
Netherlands	458.062			532.338	116 %
Portugal	n.c.	105.510	1.488	106.998	
United Kingdom	n.c.			3.650.400	

⁽¹⁾ From 1 January 1990 to 31 December 1991.

⁽¹⁾ In the case of columns b, c and d, estimates based on the BAG figures (excluding checks by the Länder).

4. Offences
Number of offences recorded

4.1. Article 6 of Regulation (EEC) No 3820/85: driving period

Member State	Type of offence	PASSENGERS				GOODS				PASSENGERS AND GOODS ⁽¹⁾	
		nationals	EEC	third countries	total non-nationals	nationals	EEC	third countries	total non-nationals	nationals	non-nationals
Belgium	- daily driving period - six days maximum - fortnight	36	42 173	3		282	5032	60			
Denmark	- daily driving period - six days maximum - fortnight	4 ⁽²⁾				859					
Germany	- daily driving period - six days maximum - fortnight										
Greece ⁽³⁾	- daily driving period - six days maximum - fortnight	303 ⁽²⁾				567 2					
Spain	- daily driving period - six days maximum - fortnight									10056 35	659
France	- daily driving period - six days maximum - fortnight									17021 118	4831 35
Ireland	- daily driving period - six days maximum - fortnight	68 4				3679 82 7			18		

Ireland	- daily driving period - six days maximum - fortnight	68 4				3679 82 7			18	
Italy	- daily driving period - six days maximum - fortnight	1307 61 239	n.c.							
Luxembourg	- daily driving period - six days maximum - fortnight	42	161 1			16				
Netherlands	- daily driving period - six days maximum - fortnight	132	15	3		9547 9	2534	75		
Portugal	- daily driving period - six days maximum - fortnight	128 21 4				351 17 16			6	
United Kingdom ^(*)	- daily driving period - six days maximum - fortnight	77 1				1069 145 8				417 130 3

(*) From 1 January 1990 to 31 December 1991.

(**) Court cases only (excluding warnings, immobilization, etc.).

Notes:

- (1) Where the Member States were unable to supply more detailed figures.
- (2) EEC total, including nationals.

4. Offences

Number of offences recorded

4.2. Article 7 of Regulation (EEC) No 3820/85: breaks

Member State	Type of offence	PASSENGERS				GOODS				PASSENGERS AND GOODS ⁽¹⁾	
		nationals	EEC	third countries	total non-nationals	nationals	EEC	third countries	total non-nationals	nationals	non-nationals
Belgium	- driving for more than 4½ hours without a break	6	19	3		117	739	19			
	- breaks too short	5	11			81	239	1			
Denmark	- driving for more than 4½ hours without a break - breaks too short	} 4 ⁽²⁾				1276					
Germany	- driving for more than 4½ hours without a break - breaks too short										
Greece ⁽³⁾	- driving for more than 4½ hours without a break	6 ⁽²⁾				13					
	- breaks too short	2				5					
Spain	- driving for more than 4½ hours without a break - breaks too short								4846	316	
									202		
France	- driving for more than 4½ hours without a break - breaks too short	} 8912								2483	

Ireland	- driving for more than 4½ hours without a break - breaks too short	} } 378 }				2338			82	
Italy	- driving for more than 4½ hours without a break - breaks too short	} } 2531 }				n.c.				
Luxembourg	- driving for more than 4½ hours without a break - breaks too short	28	136			13				
Netherlands	- driving for more than 4½ hours without a break - breaks too short	40	4	1		6383	1105	58		
Portugal	- driving for more than 4½ hours without a break - breaks too short	} } 246 }			1	222			2	
United Kingdom ^(x)	- driving for more than 4½ hours without a break - breaks too short	99 20				1 712 114				10 ⁽⁴⁾

(x) From 1 January 1990 to 31 December 1991.

Notes:

- (1) Where the Member States were unable to supply more detailed figures.
- (2) EEC total, including nationals.
- (3) Excluding the figures for Northern Ireland.
Northern Ireland figures: all offences, for both passengers and goods: 190.
- (4) Infringements of Article 7 where no distinction was drawn.

4. Offences
Number of offences recorded

4.3. Article 8 of Regulation (EEC) No 3820/85: rest periods

Member State	Type of offence	PASSENGERS				GOODS				PASSENGERS AND GOODS ⁽¹⁾	
		nationals	EEC	third countries	total non-nationals	nationals	EEC	third countries	total non-nationals	nationals	non-nationals
Belgium	- daily - weekly	34	82	3		401	3970	33			
Denmark	- daily - weekly	} 3 ⁽²⁾				} 1100					
Germany	- daily - weekly										
Greece ⁽³⁾	- daily - weekly	} 970 ⁽²⁾ 2628				} 392					
Spain	- daily - weekly									4603 801	
France	- daily - weekly									16116 88	4209 13
Ireland	- daily - weekly	471 24			2	5509 794			51		
Italy	- daily - weekly	1442 1232				n.c.					

Luxembourg	- daily - weekly	26	105 1			13				
Netherlands	- daily - weekly	507 12	60 2	10		20651 24	3877	153		
Portugal	- daily - weekly	95 2			1	407 13			7 6	
United Kingdom ⁽³⁾	- daily - weekly	95 117				918 426				525 103

(x) From 1 January 1990 to 31 December 1991:

Notes:

- (1) Where the Member States were unable to supply more detailed figures.
- (2) EEC total, including nationals.
- (3) Excluding the figures for Northern Ireland.
Northern Ireland figures: all offences for goods and passenger services: 190.

4. Offences
Number of offences recorded

4.4 Article 14 of Regulation (EEC) No 3820/85: Service timetable and duty roster

Member State	Type of offence	PASSENGERS Provisions not applicable to goods transport			
		Nationals	EEC	Third countries	Total non-nationals
Belgium	Faulty Incorrectly applied				
Denmark	Faulty Incorrectly applied				
Germany	Faulty Incorrectly applied				
Greece ^(x)	Faulty Incorrectly applied	68 ⁽¹⁾			
Spain	Faulty Incorrectly applied	6214			
France	Faulty Incorrectly applied	} } 353 ⁽²⁾ }			117
Ireland	Faulty Incorrectly applied	4 11			
Italy	Faulty Incorrectly applied	} } 57 ⁽²⁾ }			
Luxembourg	Faulty Incorrectly applied Others		4 8 23		

Netherlands	Faulty Incorrectly applied				
Portugal	Faulty Incorrectly applied	} } 26 ⁽²⁾ }			
United Kingdom ⁽³⁾	Faulty Incorrectly applied				

(x) From 1 January 1990 to 31 December 1991.

Notes:

- (1) EEC total, including nationals.
- (2) Infringements of Article 14, without distinction.
- (3) Excluding the figures for Northern Ireland.
Northern Ireland figures: all offences for passenger and goods services: 190.

4. Offences
Number of offences recorded

4.5. Articles 6, 7, 8 and 14 of Regulation (EEC) No 3820/85
Overview by Member State

Member State	PASSENGERS				GOODS				Total
	Nationals	EEC	Third countries	Total non-nationals	Nationals	EEC	Third countries	Total non-nationals	
Belgium	81	327	9		1.249	9.980	113		11.759
Denmark	11				3.235				3.246
Germany									
Greece ^(x)	3978				979				4.957
Spain									27.732
France									54.296
Ireland	960			2	12.409			151	13.522
Italy	6889				n.c.				
Luxembourg	96	439			42				577
Netherlands	691	81	14		36.614	7.516	286		45.202
Portugal	522			2	1.026			21	1.571
United Kingdom	409				4.392				6.179

(x) From 1 January 1990 to 31 December 1991.

4. Offences

Number of offences recorded.

4.6 Articles 6, 7, 8 and 14 of Regulation (EEC) No 3820/85

Overview by category of offence (all Member States which submitted data).

Passengers and goods (nationals, EEC and third countries).

Article	Type of offence	Number of offences
6	Driving periods	60.900
7	Breaks	34.828
8	Rest periods	73.127
14	Service timetable and duty roster	6.885
TOTAL		175.740

Note

In Germany the number of offences recorded was 24.9% higher in 1992 than in 1991. The proportion between the number of vehicles checked and the number of offences recorded was as follows:

	1991	1992	average
Total	15.7%	16.5%	16.1%
Nationals	15.1%	15.7%	15.4%
Non-nationals	16.3%	17.3%	16.9%

Roughly half the offences detected (slightly more than half in 1991 and slightly less in 1992) concern the recording equipment. In most cases, the aim was to cover up other offences, particularly concerning the driving periods.

5. National initiatives

5.1 Regulatory measures

In France Decree No 91.223 of 22 February 1991 introduced exceptional arrangements for national operations in five vehicle categories covered by Article 13 of Regulation No 3820/85. Circular No 91-16 of 23 February 1991 set out the detailed arrangements for implementing this Decree. Decree No 92-1006 of 21 September 1992 cleared the way for application of the revised AETR Agreement on French territory. A circular explained the changes made. Circular No 90-94 of 20 December 1990 on statistics on checks on road transport entered into force on 1 January 1991.

In the Netherlands the new Road Transport Act was introduced in May 1992. This Act includes a penalty point system leading, in the last resort, to withdrawal of road haulage licences from holders definitively found guilty of repeated, serious infringements of the rules on driving time. At the same time, the possibility of proposing a settlement to carriers from other countries who infringe the provisions of Regulation No 3820/85 has been opened up.

5.2 Administrative measures

In the Netherlands, to avoid distortion of competition a new inspection method has been developed and introduced. It is based on identification of the segment of the market on which the most infringements of the social legislation are detected. Then targeted checks are organized systematically on the undertakings in the corresponding sector. A signalling system makes it possible to monitor undertakings from other sectors.

In France the resources available to the inspection officers have been improved by acquiring additional tachograph disc readers and analysers, by making improvements to the appropriate software and by expanding the fleet of vehicles specially equipped for checks on road transport.

A special effort has also been made on information and documentation.

The human resources available remained more or less stable, with the number of inland transport inspectors rising from 276 to 282 over the reference period. On the other hand, the number of labour inspectors for the transport sector fell from 82 in 1991 to 73 in 1992.

In Belgium the number of roadside inspectors fell from 36 in 1991 to 33 in 1992, while the number of inspectors for the checks on undertakings' premises held steady at four throughout the reference period.

In Italy the spotlight has been on the inadequate number of inspectors, on the need for pre-work and on-the-job training for them, on instrumentation allowing easier, faster reading of the control discs and on greater access to the documents to be checked, particularly on the premises of undertakings.

Proposals have also been put forward to make the tachographs more inviolable and for a numbering system for the record sheets. An awareness-raising campaign for trade associations in the road haulage sector has been advocated so that they recommend their members to behave more carefully and responsibly where driving time is concerned.

The other Member States reported no new legislation, regulations or specific national initiatives over the reference period.

6. Penalties

6.1 Scales

Member State	Type of penalty
Denmark	Fine of at least DKR 400 for the driver and DKR 1 000 for the company, the amount depending on the seriousness of the offence
France	<ul style="list-style-type: none"> - Minor infringements are liable to a fine of between FF 1 300 and FF 3 000 (between FF 3 000 and FF 6 000 for second offences) - Criminal offences are liable to a fine of between FF 500 and FF 15 000 or to imprisonment of between 15 days and three months. Offenders from other countries may deposit in court a sum of FF 900 per infringement or between FF 2 000 and FF 10 000 per criminal offence
Ireland	Maximum fine of £1 000 and/or six months' imprisonment

None of the other Member States submitted their scales for the penalties imposed in the event of infringement of Regulation (EEC) No 3820/85.

6.2 Changes

- No reports were received of any changes in the penalties over the reference period.

7. Relations and cooperation between the Member States

Although this heading is not included explicitly in the standard form, a number of Member States made comments on two points - the checks and exchanges of information.

7.1 Concerted checks

Denmark mentioned five concerted campaigns of random checks on northbound vehicles with Germany (two in 1991 and three in 1992).

In 1991 some 64 cases were reported, 45 of them for breaches of the rules on driving and rest periods.

In 1992 a further 124 cases were reported, of which 77 were for breaches of the rules on driving and rest periods.

Germany was involved in coordinated inspection campaigns with France (three in 1991 and six in 1992), the Benelux countries (four in 1991 and four in 1992) and Denmark (two in 1991 and three in 1992).

France reported fruitful concerted inspection campaigns with neighbouring Member States, i.e. the Benelux countries, Germany, Spain and the United Kingdom. In the case of the United Kingdom, this had even led to experimental training exchanges between the UK and French inspection authorities.

7.2 Exchanges of information

Denmark reported that it had exchanged information with the Netherlands, France and Germany. The figures for the number of offences committed by German drivers in other countries are:

Country	1991	1992
B	10	-
DK	1	1
E	2	-
F	1202	1610
NL	306	522

These figures show a marked reduction in Belgium and a steady increase in France, compared with previous years.

The figures for penalties imposed in Germany on non-Germans submitted to the Ministries concerned are:

Country	1991	1992
B	2455	2447
DK	661	910
E	252	436
F	2416	2301
UK	169	284
GR	165	184
I	1026	1145
IRL	49	46
L	198	188
NL	4762	3281
P	48	121

The German authorities made an annual average of 3 375 requests for information from the other Member States, mainly on the lorry owners, the persons responsible for undertakings and the legal status of the undertakings.

8. Conclusions and comments on all the trends observed in the fields in question

8.1 Conclusions and comments by the Member States

In France the number of vehicles checked at the roadside was down slightly in 1992 compared with 1991. However, the number of working days checked at the roadside rose from 840 694 in 1991 to 900 779 in 1992. The number of drivers checked on the premises of their undertaking likewise rose from 39 864 in 1991 to 45 792 in 1992. The number of working days checked at premises of undertakings was also higher. The number of working days checked at the roadside and on the premises of undertakings also rose from 1 294 833 in 1991 to 1 408 638 in 1992, thereby meeting the minimum target set by Directive 88/599. These figures indicate that the inspection authorities' activities are growing. This must be maintained, given that infringements of the European social legislation account for slightly over half of all offences recorded on the road.

In Portugal, the number of vehicles checked fell by 15.2% in 1992, compared with 1991, and the number of record forms checked by 13.3% but the number of non-Portuguese vehicles checked rose by 29.1%. The number of offences was also down by 3.7%, although the picture was varied, with a 13% increase in offences under the Community legislation but a reduction in infringements of the national legislation.

In Italy comparison of the 1992-1992 data with the figures for the two previous years shows that fewer undertakings and documents were checked on both the passenger and goods transport sides. This reduction is due not only to the shortage of inspectors but also to the difficulty of retracing undertakings which have changed hands or gone out of business. In this connection the labour inspectors also stressed that they had no data on the size and location of the national undertakings covered by Regulations (EEC) No 3820/85 and 3821/85. The most frequent offences were non-use of discs, use of a disc for only part of the journey or use of several discs on the same day. All too often these frauds can be put down to price-cutting by carriers in order to win contracts. The flat-rate travel expenses system in turn sometimes tempts drivers to curtail their rest periods in order to shorten the journey.

In Germany although the data are incomplete there has been a noticeable increase in the number of offences recorded. This trend can be attributed, in particular, to the increased number of checks.

A large number of often easily detectable offences sought to cover up other infringements, particularly of the rules on driving time, by tampering with the recording equipment and falsifying the discs. The fact that in Germany the fines for tampering with the equipment are ten times lower than the fines for breaking the law, particularly on driving and rest periods, (DM 1 000 compared with DM 10 000) could explain this phenomenon.

From the German point of view, it would be desirable to put an end to these differences. The following measures also appear necessary:

- Meeting convened by the Commission between the heads of the national inspection authorities in order to standardize practice.
- Amendment of Regulation No 3821/85 in order to minimize the opportunities for fraudulent use of the recording equipment.
- Harmonization of penalties for infringements of the social legislation.
- Simplification of Regulation No 3820/85, particularly on driving and rest periods (and compensatory periods).
- Regular meetings between the competent national representatives to guarantee uniform interpretation and application of the European social legislation.

None of the other Member States made any comments under this heading.

8.2 Conclusions and comments by the Commission

8.2.1 The new standard form has clearly allowed greater standardization of the data gathered, but was introduced too late to produce optimum results.

What is more, the large number of national authorities responsible for the inspections militates against standardization. Some of the forms cover the data from all the inspection authorities (including the police and gendarmerie) while others supply only the data from the authorities specializing in checking compliance with the social legislation relating to road transport.

Another point to note is that the vast majority of the states which submitted the data required in order to check this minimum attained or surpassed the target of checking at least 1% of the total number of days worked by drivers of vehicles covered by Regulations No 3820/85 and 3821/85. Only Belgium seems to be having real problems meeting this target, even after including the data from the gendarmerie. In the case of Germany the checks carried out by the Länder, for which no figures are available for the reference period, should make it possible to surpass the 1% target.

8.2.2 Interpretation of Regulation No 3820/85 continues to pose problems, with frequent differences between the Member States. For this reason, the Commission considers it useful to recall four relevant rulings made by the Court of Justice of the European Communities over the reference period covered by this report.

Two rulings were made on 2 October 1991. In case C7/90 the Court ruled that the expression "undertaking" in Article 15 of Regulation No 3820/85 refers to an autonomous natural or legal person, irrespective of legal form, regularly carrying on a transport business and empowered to organize and control the work of drivers and crew members. It also stated that infringements of Article 15 of the Regulation may be restrained by the application of provisions consistent with the basic principles of national criminal law (without the Member States having to introduce the principle of the criminal liability of companies into their national law), provided that the resulting penalties are effective, proportionate and dissuasive.

Case C8/90 dealt with Article 18(2) of Regulation No 3820/85 which stipulates that references to the repealed Regulation No 543/69 must be construed as references to Regulation No 3820/85. The Court ruled that this clause must be interpreted as meaning that it does not relate to references to the repealed Regulation appearing in provisions of national law containing measures for the implementation of that Regulation, but that the purpose of this Article is to ensure that references to Regulation No 543/69 appearing in other Community measures are interpreted as references to Regulation No 3820/85.

In its ruling of 13 December 1991 on case C 158/90 the Court defined the term "the last day of the previous week on which he drove" in Article 15(7) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport. This refers to the last driving day of the last week, prior to the current week, during which the driver concerned drove a vehicle subject to Regulation No 3820/85.

In its ruling of 25 June 1992 on case C 116/91 the Court established as law that the derogation from the requirements to install and use a tachograph in vehicles used in connection with the gas service under Article 3(1) of Council Regulation (EEC) No 3821/85 in conjunction with Article 4(6) of Regulation (EEC) No 3820/85 applies solely to vehicles used, at the relevant time, for carriage wholly and exclusively in connection with the production, transport or distribution of gas, or the maintenance of the necessary installations for that purpose. However, that derogation does not apply to vehicles wholly or partly used at the relevant time in connection with the carriage of domestic gas appliances.

Finally, three further rulings after the period covered by this report should be mentioned here for information.

- In case C 116/92 on 15 December 1993 the Court ruled that:

- 1) Article 7(1) and (2) of Regulation No 3820/85 is to be interpreted as prohibiting drivers to which it applies from driving continuously for more than 4½ hours. But where a driver has taken 45 minutes' break either as a single break or as several breaks of at least 15 minutes during or at the end of a 4½-hour period, the calculation provided for by Article 7(1) of the Regulation should begin afresh, without taking into account the driving time and breaks previously completed by the driver.
- 2) The calculation provided for by Article 7(1) of Regulation No 3820/85 begins at the moment when the driver sets in motion the recording equipment provided for by Regulation No 3821/85 and begins driving.

- The ruling of 2 June 1994 on case C 313/92 reads:

- 1) Article 2(1) of Regulation No 3820/85 must be interpreted as meaning that the Regulation is applicable to carriage by road within the Community by vehicles registered in a Member State in the course of journeys to or from third countries which are not parties to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR), or in transit through such countries.

- 2) The expression "each period of 24 hours" in Article 8(1) of Regulation No 3820/85 must be interpreted as meaning any period of 24 hours commencing at the time when the driver activates the tachograph following a weekly or daily rest period. Where the daily rest is taken in two or three separate periods, the calculation must commence at the end of the period of not less than eight hours.

- In case C 394/92, on 9 June 1994 the Court ruled that:

- 1) The "daily working period" within the meaning of Article 15(2) of Regulation No 3821/85 comprises the driving time, all other periods of work, the period of availability, breaks in work and, where the driver divides his daily rest into two or three periods, such a period of rest, provided that it does not exceed one hour. The "daily working period" commences at the time when the driver activates the tachograph following a weekly or daily rest period, or, where the daily rest is divided into separate periods, following the rest period of at least eight hours' duration. It ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of eight consecutive hours.
- 2) The term "day" within the meaning of Regulation No 3820/85 and of Regulation No 3821/85 must be understood as equivalent to the term "period of 24 hours", which refers to any period of that duration which commences at the time when the driver activates the tachograph following a weekly or daily rest period.

8.2.3 Two significant developments in the European social legislation on road transport over the period covered by this report were:

- Commission Regulation (EEC) No 3688/92 of 21 December 1992 adapting to technical progress Council Regulation (EEC) No 3821/85 on recording equipment in road transport which introduced means to make the tachograph more inviolable.
- The communication of 20 March 1992 from the Commission to the Council on the introduction of the concept of working time into Regulations (EEC) No 3820/85 and 3821/85 which deal with driving and rest periods in the road transport sector.

This communication concluded that the length of working time, and the methods of calculating it, vary widely from one Member State to another and that European harmonization could produce more equal conditions of competition in this respect. Similarly, harmonized limits on working hours should help to improve road safety and drivers' working conditions.

But effective monitoring of any such regulations remains an extremely complex problem, particularly if this concept were to replace the concept of driving periods, which offer the objective, easily-monitored factor of operation of the vehicle. Also, any new regulations would entail opening negotiations with the AETR contracting parties.

In the light of these difficulties, the Commission intended to encourage the work of the Joint Committee on Road Transport, which had started to look into the matter.

8.2.4 Prospects for checks and penalties

The Commission wishes the social legislation to be applied as effectively and uniformly as possible. This objective entails more harmonized interpretation of the provisions of Regulation No 3820/85 combined with more effective checks and penalties providing a real deterrent for potential frauds and greater uniformity to avoid distortion of competition.

The 1994 report by the "groupe des sages" on road transport stated that action must be taken immediately to redefine, harmonize and apply the regulations.

To follow up these recommendations the Commission is taking four main lines of approach:

- modernization of the tachograph to ensure greater reliability, both with data-gathering and against fraud, and to speed up the checks by producing recordings which are easier to read;
- driver training, which could be made mandatory;
- tightening-up and harmonization to produce more effective inspection systems, without distorting competition;
- alignment of penalties and/or establishment of minimum penalties and uniform approach to immobilization of vehicles (this measure, in particular, was proposed by the "groupe des sages").

The third and fourth measures must be taken in concertation with the national authorities responsible for the social legislation relating to road transport.

GENERAL CONCLUSIONS

Completion of the single market calls for harmonization of the conditions of competition, to which the European social legislation relating to road transport makes a contribution. Beyond that, the legislation must be applied genuinely and under similar conditions in the Member States.

The two-yearly report compiled to comply with Article 16 of Regulation No 3820/85 provides an opportunity to take stock of the conditions in which this legislation is applied.

The standard form introduced should provide a means for meaningful assessment of the measures taken to apply the social legislation, for making comparisons between the Member States and for following developments.

To attain this objective, the Member States must submit the data strictly within the framework laid down by the standard form and, as far as possible, by the time limit set by Regulation No 3820/85.

Accordingly, the Member States are reminded that they must submit their data for the next report, the eighteenth covering 1993 and 1994, by 30 September 1995 at the latest.

By the very nature of the objectives (harmonization of competition, road safety and drivers' social welfare), effective application of this legislation is in everyone's interest. Completion of the single market and the gradual liberalization of cabotage make harmonization of the conditions under which it is applied even more necessary. Also, the cooperation between Member States, as provided for, *inter alia*, by Articles 5 and 6 of Directive 88/599 of 23 November 1988, should provide an opportunity to compare experience and align practice.

The Commission will also organize regular meetings of the national experts responsible for the checks in the Member States in order to harmonize interpretation of the European social legislation and, where possible, to bring into line the conditions under which it is applied.

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