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Driving and rest times for professional drivers: Europe updates the social rules in road haulage

The European Parliament and the Council agreed yesterday on the draft European legislation to improve driving times and rest periods for professional drivers and step up checks on lorries. Drivers will have at least two full days off every two weeks and a longer rest period each day. These new rules will bring the practices of the different EU Member States closer together and contribute to road safety. "Opening up new markets has to go hand in hand with rules that apply to everyone to ensure fair working conditions. These European social rules create new rights for workers and protect against social dumping", said Jacques Barrot, Commission Vice-President responsible for transport.

There is a whole raft of European social legislation covering the various modes of transport. In recent years, for example, Europe has strengthened the maritime professions by adopting rules on training and working conditions. The Commission's proposals on certification of engine drivers and aircraft cabin crew are also aimed at harmonising the social rules.

The new package¹ concluded yesterday complements the working time legislation and strengthens the social rules in the road transport sector. Member States will still be free to apply even stricter rules in the case of road transport carried out entirely within their own territory, but they will not be allowed to fall short of the minimum rules laid down in the European legislation. This amounts to a major social advance in certain countries and will serve to prevent social dumping.

The package brings in an obligatory minimum daily rest of 9 hours for drivers (instead of the present 8 hours) and an obligatory rest of at least 45 consecutive hours every two weeks. This "weekend off" for professional drivers, in the form of a real rest for two full days at least every fortnight, is unknown in most Member States.

Another measure is the reduction of maximum driving time for professional drivers. At present they can drive for up to 74 hours a week. When this instrument comes into force, no professional driver in Europe will be allowed to drive for more than 56 hours a week. Several Member States will have to review their legislation to incorporate this social advance. It complements the legislation already in force since 23 March that limits the working time for professional drivers to an average of 48 hours a week over a four-month period.

¹ Proposal for a Regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (COM/2001/573).
Proposal for a Directive of the European Parliament and of the Council on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities.

The draft legislation provides that it will be the drivers' employers (sharing liability with the shippers) and no longer drivers themselves who will be held responsible in the case of infringement. The fault will no longer lie with the hard-pressed drivers. All the players involved will have to bear their share of the responsibility.

One Member State will be able to penalise infringements committed in another Member State. This extraterritoriality of penalties and prosecutions is a major innovation. With the introduction of the more accurate and tamper-proof digital tachograph,² it will be possible for inspectors to check drivers' driving times over the previous 28 days and to take the vehicle off the road immediately in the case of a serious infringement.

These new rules will be accompanied by a gradual increase in the number of checks from 1% to 3% of days worked by drivers as well as a tripling of the number of operations carried out jointly by Member States. The checks should serve to verify that the social rules are being applied and enable action against 'cowboy hauliers' who put their drivers and European citizens at risk. They are a means of ensuring fair competition in Europe.

To this end, besides the minimum requirements as regards training and equipment, an electronic information exchange system will be set up to facilitate cooperation between the national authorities responsible for carrying out the checks.

The new legislative package will now have to be approved separately by each institution (Council and Parliament) before it is published in the Official Journal and enters into force throughout the EU.

² On-board device which records drivers' driving and rest periods.

Background

1. Objective of the proposals of the Commission

- **Regulation:** the regulation aims to simplify, clarify and update the current 1985 Regulation on driving times and rest periods of professional drivers (goods and passengers) and render it more easily enforced.
- **Directive:** the directive updates the current 1988 Directive on minimum checks. It aims to increase the quantity and enhance quality of checks, promote greater cooperation between enforcement authorities and establish a common view of serious infringements.

2 . Sensitivities and political importance

These two proposals, the Regulation dating from October 2001, the Directive from October 2003, have become a closely linked package and were discussed at the same time in the conciliation. The dossier is highly sensitive as the entry into force of both legislative instruments will have significant consequences for the transport sector, not only within the Union, but also outside the Union, where negotiations will now start to align the equivalent United Nations/Economic Council of Europe agreement, the AETR³. This agreement has been ratified by all Member States and most other European countries, including Russia and Turkey. The impact will therefore be extensive.

3. New Gains (see also attached table)

Regulation:

Some of the key gains of the new Regulation include:

- a) A clear weekly driving time limit of 56 hours – the current Regulation has an ambiguous wording which means that driving time could be up to 74 hours per week, if not more.
- b) Breaks will be more frequent: under the current system, the 45 minute break can be split into three periods of 15 minutes. It has been legally possible to drive almost 9 hours with only 15 minutes rest. Breaks will now be split in a way that ensures that this does not happen.
- c) Daily rest simplified and social progress achieved: Daily rest can currently be split into three separate periods, one of which must be a minimum of 8 hours. In future, it can only be split into two periods of at least 3 hours plus at least 9 hours. The minimum daily rest is therefore raised by one hour and simplified.
- d) Regular weekly rest periods: the driver now has the right to a weekend rest (45 hours) at least once every fortnight, which can be easily checked on the road and at the premises of the undertaking.

³ The European Agreement concerning the work of crews of vehicles engaged in International road transport.

- e) Uniform approach to interpreting and applying the Regulation: a new committee comprising enforcement officers from the Member States, along with the social partners at European level, will advise the Commission on deciding on a common approach to applying the rules; in addition, new precise definitions are included to clarify the text.
- f) Extraterritoriality of sanctions: this is a novelty in jurisdiction, one welcomed by enforcement officers. Up until now, enforcement officers could only sanction those infringements committed on their national territory or at best by their own nationals abroad. Now no matter where the infringement is committed, an inspector at a roadside check can sanction it.
- g) Co-liability of the whole transport chain: this principle recognises that operators are often the weak link in the transport chain, and can often be put under undue pressure, particularly by shippers, to drive to impossible schedules that cause them to infringe the rules. The provision is already in the new sectoral working time directive and is now extended to all the Community social rules.
- h) Common range of sanctions available to enforcement staff: a common range of sanctions is set out which each Member State must make available to its inspectors. This also includes the power to immobilise vehicles if the infringement detected means that to let the driver continue would be a road safety hazard.

Directive

Key gains of the new Directive include

- a) Increase in minimum percentage of checks from 1% to 3% of days worked: this will mean a significant improvement in the visibility of checks both at the roadside and on the premises, as well as a major investment in enforcement activity. Also, whenever it is found that the majority of checks (over 90%) are made on vehicles equipped with digital tachographs, and in any case after 2012, the Commission may consider raising the minimum percentage of checks to 4%.
- b) Checks at the roadside can be more extensive: currently checks may be made of the current week's records and the day in the previous week that the driver drove. In future, and in line with the introduction of the digital tachograph, and the personal driver card which stores up to 28 days of data, inspectors may look back up to 28 days from 1 January 2008 to determine if infringements have been committed. Drivers must either carry their card or 28 days worth of records.
- c) The focus of checks will be primarily at the premises of undertakings: in future at least 50% of the minimum percentage of checks must take place at the premises. As this is where inspections can be more thorough, with all the relevant data to hand, the emphasis is placed on this type of check.

- d) Drive to enhance the quality of enforcement: the Directive stipulates that inspectors should be well trained and supplied with a common minimum list of equipment. Member States are obliged to draw up and implement a coherent national enforcement strategy, for which they may designate a body to coordinate the actions of the enforcement agencies concerned. The anti-discrimination clause has been strengthened and a more comprehensive statistical return to the Commission required.
- e) Enhanced cooperation promoted: joint checking operations are trebled from two to six per year; joint training exchanges between Member State inspectors are to be held at least once per year; information exchange on non-resident offenders to be promoted. A designated coordinating body within a Member State is to act as a contact point for enforcement issues when dealing with other Member States and the Commission.
- f) Best practice promoted: a new committee comprising Member State enforcement officer representatives as well as the social partners at European level is created to look at:
- Facilitating dialogue between industry and enforcement authorities;
 - Coherence of approach between enforcement authorities;
 - Best practice in enforcement;
 - Alignment of risk rating systems for companies so that checks can be better targeted;
 - Common format electronic data exchange systems - these can be developed and promoted primarily but not exclusively through the committee or any body the Commission may designate, such as EuroControl Route (Transport inspectors) or TISPOL (Road safety police network);
 - The elements to be checked at the roadside and on the premises - may be updated to reflect best practice;
 - Standard equipment list – may also be updated to reflect best practice;
 - Statistics to be collected may be further clarified.
- g) Classification of infringements: through the new committee the Commission may now set guidelines for a common classification of infringements. Not only will this clarify for industry what are commonly recognised as serious infringements, it will also help focus enforcement efforts on essential issues. *The Commission has already indicated in a declaration that it will take as its basis for discussion the serious infringements contained in its initial proposal.*