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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 (11337/2/2004 – C6-0250/2004 – 2001/0241(COD))

Committee on Transport and Tourism

Rapporteur: Helmuth Markov

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 (11337/2/2004 – C6-0250/2004 – 2001/0241(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (11337/2/2004 – C6-0250/2004),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2001)0573)²,
 - having regard to the amended proposal (COM(2003)0490)³,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Transport and Tourism (A6-0076/2005),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and Commission.

Council common position

Amendments by Parliament

Amendment 1 RECITAL 8

(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

(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

¹ OJ C 38E, 12.2.2005, p. 17-152

² OJ C 51E, 26.2.2002, p.234.

³ OJ C ... / Not yet published in OJ.

Community and a third country other than Switzerland and the countries party to the European Economic Area agreement or through such a country.

Community and a third country other than Switzerland and the countries party to the European Economic Area agreement or through such a country. ***It is desirable that the Community and the signatory states to the AETR amend that agreement so as to bring it into line with the provisions of this Regulation.***

Justification

Reinserts Amendment 3 from first reading (P5 TA-PROV(2003)0008)

Amendment 2
RECITAL 9

(9) In the case of carriage by road using vehicles registered in a third country which is not a contracting party to the AETR, the provisions of ***the AETR*** should apply to that part of the journey effected within the Community ***or within countries which are contracting parties to the AETR agreement.***

(9) In the case of carriage by road using vehicles registered in a third country which is not a contracting party to the AETR, the provisions of ***this Regulation*** should apply to that part of the journey effected within the Community.

Justification

Reinsert Amendment 4 from first reading (P5 TA-PROV(2003)0008)

Amendment 3
RECITAL 13

(13) Full definitions of all key terms should be given in order to render interpretation easier and ensure that this Regulation is applied in a uniform manner. The definition of "week" provided in this Regulation should not prevent drivers from starting work on any day of the week.

(13) Full definitions of all key terms should be given in order to render interpretation easier and ensure that this Regulation is applied in a uniform manner. ***In addition, efforts should be made to ensure uniform interpretation and application of this Regulation by national supervisory authorities.*** The definition of "week" provided in this Regulation should not prevent drivers from starting work on any day of the week.

Justification

Reinsert Amendment 5 from first reading (P5 TA-PROV(2003)0008).

Amendment 4
RECITAL 23

(23) National derogations should reflect changes in the road transport sector and be restricted to those elements not now subject to competitive pressures. ***deleted***

Justification

EU exemption or at least national derogations should be maintained for ALL services delivered in the interest of the general public. Private-sector organisations involved in these services are strictly regulated and therefore do not enjoy commercial freedom.

Amendment 5
RECITAL 29 A (new)

(29a) Since the provisions concerning the minimum ages of drivers have now been laid down in Directive 2003/59/EC¹ and must be transposed by 2009, only transitional provisions concerning the minimum age of drivers and drivers' mates are required in this Regulation.

¹ *Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4).*

Amendment 6
RECITAL 31 A (new)

(31a) The introduction of recording equipment pursuant to Regulation (EC) No. 2135/98, enabling the activities of a driver over a 28-day period to be recorded electronically on his driver card and electronic records of vehicle operations to cover a 365-day period, will in future make for more rapid and comprehensive roadside checks. The transitional period

in which two different tachograph systems (conventional recording equipment and the new digital tachograph) will be in use at the same time should be restricted to the minimum so as to enable checks to be conducted efficiently.

The use of the digital tachograph in all vehicles should therefore be made mandatory as quickly as possible. Accordingly, Regulation (EEC) No 3821/85 should be amended so that all vehicles must be fitted with such a device by a specified date.

Justification

Reinserts Amendment 8 from first reading (P5 TA-PROV(2003)0008).

Amendment 7
RECITAL 31 B (new)

(31b) Experience indicates that compliance with the provisions of this Regulation, in particular the specified maximum driving time over a two-week period, cannot be enforced unless proper and effective supervision is brought to bear in roadside checks in relation to the whole of that period and not just the maximum of eight days laid down in Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonisation of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport¹ in conjunction with Regulation (EEC) No 3821/85. Those two acts should therefore be amended in order to impose a requirement to check at the roadside driving times during the preceding 28 days, whether a vehicle is fitted with conventional recording equipment or the new digital recording device.

¹ OJ L 325 , 29/11/1988, p. 55.

Justification

Reinserts Amendment 9 from first reading (P5 TA-PROV(2003)0008).

Amendment 8
RECITAL 31 C (new)

(31c) Under Directive 88/599/EEC roadside checks are confined to daily driving time, daily rest periods, and breaks. When digital recording equipment is introduced, driver and vehicle data will be stored electronically, and data will be able to be evaluated electronically on the spot. This should enable simple checks to be carried out on weekly rest periods and compensatory rest periods for reduced daily and weekly rest periods. Roadside checks should also be able to ascertain compliance with the maximum working time of 60 hours in any one week, in accordance with Directive 2002/15/EC. To that end drivers could carry a certificate issued by their employer, as they already do in order to furnish evidence of weekly rest periods, as long as there is no binding requirement to enter data manually in the digital recording device. Given the reference period, supervision of the 48-hour average working week should continue to be exercised in checks on undertakings.

¹ OJ L 80, 23.3.2002, p. 35.

Justification

Reinserts Amendment 10 from first reading (P5 TA-PROV(2003)0008).

Amendment 9
RECITAL 31 D (new)

(31d) Article 2(2) of Council Directive

88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport¹ stipulates that at least 1% of working days must be checked every year, of which not less than 15% are to be checked at the roadside and not less than 25% at the premises of undertakings. In view of numerous past infringements, the percentage of days checked should be progressively raised to at least 2% from 1 January 2007, 3% from 1 January 2009 and 4% from 1 January 2011. At least 30% of all working days checked should be checked at the roadside and at least 50% at the premises of undertakings, as such checks are the only means of ascertaining a driver's overall working pattern. In addition, Directive 88/599/EEC should be amended so that the checks are also carried out in accordance with Directive 2002/15/EC.

¹ (OJ L 325, 29.11.1988, p. 55).

Justification

Instead of roadside checks accounting for 15% of all checks on working days, the figure should be 30%.

Amendment 10
RECITAL 31 E (new)

(31e) The application of provisions relating to digital tachographs should be consistent with this Regulation in order to achieve optimal effectiveness in monitoring and enforcing social legislation relating to road transport.

Justification

Reinserts Amendment 89 from first reading (P5 TA-PROV(2003)0008).

Amendment 11 ARTICLE 2, PARAGRAPH 1, POINT (BA) (new)

(ba) of goods by vehicles used by transport and delivery companies engaged in the commercial carriage of goods where the permissible maximum weight of the vehicle is less than 3,5 tonnes and it operates within a radius of more than 60 km.

Or. de

Amendment 12
Article 2, paragraph 2 A (new)

(2a) 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.

Justification

Reinserts Amendment 16 from first reading (P5 TA-PROV(2003)0008).

Amendment 13
ARTICLE 2, PARAGRAPH 3, POINT (B)

(b) vehicles registered in a third country which is not a contracting party to the AETR agreement, only for the part of the journey on the territory of the Community or of countries which are contracting parties to the AETR agreement. *deleted*

Justification

Reinserts Amendment 15 from first reading (P5 TA-PROV(2003)0008).

Amendment 14
ARTICLE 3, POINT (B)

(b) vehicles with a maximum authorised speed not exceeding **30 kilometres per hour**;

(b) vehicles with a maximum authorised speed not exceeding **40 kilometres per hour**;

Or. de

Justification

The general speed limit in European legislation on agricultural and forestry vehicles is 40 kph; for instance, this was harmonised by Directive 97/54/EC. This Regulation should follow the same rule.

Amendment 15
ARTICLE 3, POINT (B A) (new)

(ba) tractors with a maximum authorised speed not exceeding 40 kilometres per hour;

Justification

This Regulation should not apply to tractors.

Amendment 16
ARTICLE 3, POINT (C)

(c) vehicles owned or hired 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;

(c) vehicles owned or hired without a driver by the 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; ***vehicles owned or hired without a driver by the armed forces, when the carriage is undertaken in times of crisis or war;***

Justification

Reinserts Amendment 18 from first reading (P5 TA-PROV(2003)0008).

Amendment 17

ARTICLE 3, POINT (D)

(d) vehicles used in emergencies or rescue operations;

(d) vehicles used in emergencies **for transporting humanitarian aid** or in rescue operations;

Justification

Reinserts Amendment 19 from first reading (P5 TA-PROV(2003)0008).

Amendment 18

ARTICLE 3, POINT (H)

(h) vehicles or combinations of vehicles with a maximum permissible weight not exceeding **7,5 tonnes** used for the non-commercial carriage of goods;

(h) vehicles or combinations of vehicles with a maximum permissible weight not exceeding **3,5 tonnes** used for the non-commercial carriage of goods;

Justification

Reinserts Amendment 22 from first reading (P5 TA-PROV(2003)0008).

Amendment 19

ARTICLE 3, POINT (I A) (new)

(ia) vehicles used for milk collection from farms and the return to farms of milk containers or for the delivery of milk products intended for animal feed;

Justification

Reinstates Amendment 23 from first reading (P5 TA-PROV(2003)0008), and reverts to the existing provisions of Regulation (EEC) No 3820/85 concerning general derogations.

Amendment 20

ARTICLE 3, POINT (I B) (new)

(ib) vehicles used by the authorities responsible for sewerage, flood protection, water, gas and electricity services, highway maintenance and control, refuse collection and disposal, telegraph and telephone services, radio and television broadcasting and the detection of radio or television transmitters or receivers.

Justification

This amendment reinstates Amendment 24 from first reading (P5 TA-PROV (2003)0008).

Amendment 21

ARTICLE 3, POINT (I C) (new)

(ic) combinations of vehicles where the maximum permissible weight of the tractor does not exceed 3,5 tonnes and which are used to transport material, equipment or machinery that the driver requires to carry out his work and which are used only within a radius of 100 km of the driver's undertaking, provided that driving the vehicle is not the driver's principal activity.

Justification

The purpose of this amendment is to obviate the need to install a digital tachograph in vehicles which are used solely for work purposes. In the construction sector, in particular, it frequently happens that work machinery is coupled to vehicles with a maximum permitted total weight of 3.5 tonnes (which are exempt from the Regulation), thereby making them subject to the Regulation. The Regulation's objective, i.e. compliance with driving and rest periods in road transport, is not undermined by this, because driving the vehicle is not the driver's principal activity.

Amendment 22

ARTICLE 3, POINT (I D) (new)

(id) specialised vehicles transporting circus and fun-fair equipment;

Justification

Reinserts original Commission proposal.

Amendment 23

ARTICLE 4, POINT (C)

(c). “driver” means any person who drives ***the*** vehicle even for a short period, or who is carried in a vehicle ***in order to be available for driving if necessary;***

(c) “driver” means any person who drives ***a*** vehicle even for a short period, or who is carried in a vehicle ***for the purpose of driving it;***

Justification

Reinserts Amendment 28 from first reading (P5 TA-PROV(2003)0008).

Amendment 24
ARTICLE 4, POINT (G), INDENT 1

- "regular daily rest period" means any uninterrupted period of rest of at least **11 hours**. Alternatively, 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 the **second an uninterrupted period** of at least **9 hours**;

- "regular daily rest period" means any uninterrupted period of rest of at least **12 hours**. Alternatively, this regular daily rest period may be taken in **up to four** periods, the first **three** of which (**at most**) must be uninterrupted **periods** of at least **one hour** and the **last** of at least **8 hours**;

Justification

The requirement that the long rest period must be at the end solves the enforcement problems relating to the corresponding article in the present Regulation (EEC) No 3820/85.

Maintaining the possibility of having shorter parts of a split daily rest in the course of the day enables drivers to attend to personal needs better and to organise their working day as circumstances demand (traffic, delays, etc.).

Amendment 25
ARTICLE 4, POINT (H), INDENT 2

- "reduced weekly rest period" means any uninterrupted period of rest of less than 45 hours, which may, **subject to the conditions in Article 8(6), be shortened to a minimum of 24 consecutive hours**;

- "reduced weekly rest period" means any uninterrupted period of rest of less than 45 hours, which may **be shortened, at the place where the vehicle is based or the place of residence of the driver, to a minimum of 36 consecutive hours or, outside these places, to a minimum of 24 consecutive hours. Long-distance drivers may take their compensation within a period of three weeks**;

Justification

Reinsert Amendment 78 from first reading (P5 TA-PROV(2003)0008).

Amendment 26
ARTICLE 4, POINT (I A) (new)

(ia) "driving time" means the duration of the activity in which a driver controls a vehicle and is an active road user, according to the tachograph, and the time taken by the driver to make his way to the place of assignment or the vehicle, if that journey is made in a vehicle driven by the

driver himself and the distance thus travelled is more than 100 km;

Justification

In accordance with the Court of Justice's 'skills' ruling (Case C-297/99), driving time spent in vehicles other than his main work vehicle has to be added to a driver's daily and weekly driving time. The above addition would avert a situation in which, for example, a driver drives himself by car to a pickup point 600 km away, takes over the driving of a waiting coach, and, without taking sufficient breaks, drives the coach for another 600 km on the return journey, thereby nominally observing the driving times and rest periods but in reality circumventing them.

Amendment 27

ARTICLE 5, PARAGRAPH -1, -1A AND -1B (new)

-1. The minimum age of drivers engaged in the carriage of goods shall be as follows:

(a) for vehicles having a maximum permissible weight not exceeding 7,5 tonnes, 18 years;

(b) for other vehicles:

– 21 years, or

– 18 years, provided that the driver holds a certificate of professional competence recognised by one of the Member States confirming that he has completed a training course for drivers of vehicles intended for the carriage of goods by road, in conformity with Community rules on the minimum level of training for road transport drivers.

-1a. Drivers engaged in the carriage of passengers shall be aged at least 21 years.

Any driver engaged in the carriage of passengers on journeys beyond a 50 kilometre radius from the place where the vehicle is based must also fulfil one of the following conditions:

(a) he must have worked for at least one year in the carriage of goods as a driver of vehicles with a maximum permissible weight exceeding 3,5 tonnes; or

(b) he must have worked for at least one year as a driver of vehicles used to provide passenger services on journeys within a 50 kilometre radius from the place where the vehicle is based, or other types of passenger services not subject to this Regulation, provided that the competent authority considers that he has by so doing acquired the necessary experience; or

(c) he must hold a certificate of professional competence recognised by one of the Member States confirming that he has completed a training course for drivers of vehicles intended for the carriage of passengers by road, in conformity with Community rules on the minimum level of training for road transport drivers.

-1b. A driver engaged in the carriage of passengers shall not be subject to the conditions laid down in paragraph -1a (a), (b), and (c) if he has carried out that occupation for at least one year prior to 1 October 1970.

Justification

Reinsert Amendment 35 from first reading (P5 TA-PROV(2003)0008).

Amendment 28 ARTICLE 7, PARAGRAPH 2

The minimum regulated break which corresponds to each possible driving period is set out in the table below:

This break may be replaced by breaks of at least 15 minutes distributed over the driving period or immediately after it in such a way as to comply with paragraph 1 and to ensure that a total of 45 minutes is taken during or immediately after the driving period of four and a half hours.

<i>Driving Period</i>	<i>Minimum regulated break</i>
<i>0-90 minutes</i>	<i>15 minutes</i>
<i>91-120 minutes</i>	<i>20 minutes</i>
<i>121-150 minutes</i>	<i>25 minutes</i>

<i>151-180 minutes</i>	<i>30 minutes</i>
<i>181-210 minutes</i>	<i>35 minutes</i>
<i>211-240 minutes</i>	<i>40 minutes</i>
<i>241-270 minutes (maximum)</i>	<i>45 minutes</i>

Justification

The table does not serve the purpose of the revision of the Regulation. Safety is sufficiently guaranteed by the proposed amendment.

Amendment 29
ARTICLE 8, PARAGRAPH 2

2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period.

If the portion of the daily rest period which falls within that 24 hour period is at least 9 hours but less than **11** hours, then the daily rest period in question shall be regarded as a reduced daily rest period.

2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period.

If the portion of the daily rest period which falls within that 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.

Amendment 30
ARTICLE 8, PARAGRAPH 6 A (new)

6a. By way of derogation from the above, in the case of passenger transport the weekly rest period may commence no later than the end of 12 24-hour periods following the end of the preceding weekly rest period, in which case two regular weekly rest periods and one reduced weekly rest period shall then be taken together. The total accumulated driving time during these 12 24-hour periods shall not exceed 90 hours.

Amendment 31
ARTICLE 8, PARAGRAPH 8

8. Daily rest periods ***and reduced weekly rest periods*** away from base may be taken in

8. Daily rest periods away from base may be taken in a vehicle, as long as it has suitable

a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

sleeping facilities for each driver and the vehicle is stationary.

Justification

The possibility of the driver taking reduced weekly rest periods in the vehicle has been deleted.

Amendment 32
ARTICLE 10, PARAGRAPH 1

1. A transport undertaking shall not give drivers it employs or who are 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.***

1. A transport undertaking shall not give drivers it employs or who are 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.

Justification

The final part of paragraph 1, which has been in force as long as the EC Regulation, makes it impossible to penalise the forms of payment referred to (lump-sum payments) in practice. The consequence is wage dumping, pressure on drivers, breaches of the rules on driving time and rest periods, and hence a risk to road safety. The final part should therefore be deleted.

Amendment 33
ARTICLE 10, PARAGRAPH 3, SUBPARAGRAPH 1

3. A transport undertaking shall be liable for infringements committed by drivers of the undertaking, even if the infringement was committed on the territory of another Member State or a third country.

3. A transport undertaking shall be liable for infringements committed by drivers of the undertaking ***for its benefit***, even if the infringement was committed on the territory of another Member State or a third country.

Justification

Full liability of the undertaking means a reversal of the burden of proof and, in the Council common position, Member States have the right not even to consider evidence given by the undertaking. If such a reversal is introduced at all, it should only relate to situations where the undertaking benefits from the infringement.

Amendment 34
ARTICLE 10, PARAGRAPH 4 A (new)

(4a) In accordance with Article 9(b) of Directive 2002/15/EC, transport undertakings are obliged to keep records

of the working time of drivers. In this context, they shall take the steps required to acquaint themselves with the total time worked, even where drivers are employed by several employers or are only temporarily at the disposal of the undertaking.

Justification

Reinserts Amendment 49 from first reading (P5 TA-PROV(2003)0008).

Amendment 35
ARTICLE 11

A Member State may provide for longer minimum breaks and rest periods or shorter maximum driving times than those laid down in Articles 6 to 9 in the case of carriage by road undertaken wholly within its territory. Nevertheless this Regulation shall remain applicable to drivers engaged in international transport operations.

Without prejudice to the implementation of collective or other agreements concluded between the two sides of industry and already in force, a Member State may provide for longer minimum breaks and rest periods or shorter maximum driving times than those laid down in Articles 6 to 9 in the case of carriage by road undertaken wholly within its territory. Nevertheless this Regulation shall remain applicable to drivers engaged in international transport operations.

Justification

Reinserts Amendment 51 from first reading (P5 TA-PROV(2003)0008)

Amendment 36
ARTICLE 13, PARAGRAPH 1, POINT (D)

(d) vehicles *or combinations of vehicles with a maximum permissible weight not exceeding 7,5 tonnes* used by universal service providers as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service to deliver items as part of the universal service or used for carrying material or equipment for the

(d) vehicles used by universal service providers as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service 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 shall be used only within a 50

driver's use in the course of his work. These vehicles shall be used only within a 50 kilometre radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity;

kilometre radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity. ***The Member States may make such exceptions subject to individual conditions;***

Justification

Transport in cases where driving does not constitute the main activity and which is limited to a 50 km radius should not be subject to the installation of a tachograph.

Amendment 37
ARTICLE 13, PARAGRAPH 1, POINT (H)

(h) vehicles used in connection with sewerage, flood protection, or water services, road maintenance and control, or door-to-door household refuse collection or disposal services; ***deleted***

Justification

As a consequence of the amendment by the same author, creating a general derogation under Article 3, in accordance with Amendment 24 from first reading (P5 TA-PROV(2003)0008).

Amendment 38
ARTICLE 13, PARAGRAPH 1, POINT (J)

(j) specialised vehicles transporting circus and fun-fair equipment; ***deleted***

Justification

A derogation should also be allowed at Community level.

Amendment 39
ARTICLE 13, PARAGRAPH 1, POINT (O A) (new)

(oa) vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses;

Justification

Reinstates Amendment 59 from first reading (P5 TA-PROV(2003)0008), which reverts to the

existing provisions of Regulation (EEC) No 3820/85 concerning national derogations.

Amendment 40
ARTICLE 16, PARAGRAPH -1 (new)

-1. The minimum number of checks to be carried out in the Member States shall be set at least 2% of the total of days worked from 1 January 2007, 3% from 1 January 2009 and 4% from 1 January 2011. The last phase shall only enter into force when the statistics indicate that on average more than 90% of all inspected vehicles are equipped with a digital tachograph.

Justification

Reinserts Amendment 60 from the first reading (P5 TA-PROV(2003)0008), adjusted to the proposals which the rapporteur made to the common position which has been submitted in respect of the control directive .

Amendment 41
ARTICLE 16, PARAGRAPH 1, INTRODUCTORY PART

1. Where no recording equipment has been fitted to the vehicle in accordance with Regulation (EEC) No 3821/85, paragraphs 2 and 3 of this Article shall apply to:

1. Where no recording equipment has been fitted to the vehicle in accordance with Regulation (EEC) No 3821/85, ***until the compulsory introduction of digital recording equipment in accordance with that regulation*** paragraphs 2 and 3 of this Article shall apply to:

Justification

This amendment reintroduces the position at first reading with regard to compulsory fitting of the new digital recording equipment to all vehicles (see Amendment 61).

Amendment 42
ARTICLE 17 A (new)

2a. This report shall also state what use has been made of the exception provisions of Articles 3 and 13. Where necessary, the Commission shall then submit a proposal for the amendment of the exception clauses. .

Justification

In order to ensure the proper operation and enforcement of the driving and rest time regulations, it is desirable to limit the number of exceptions. In its common position, the Council has made a number of amendments to the exception clauses, based on the use made of these exceptions in practice. Practice may show that even the current exceptions are not always used, and that it is therefore no longer necessary to include these provisions in the regulation.

Amendment 4342 ARTICLE 19, PARAGRAPH 1

1. Member States shall lay down rules on **penalties applicable to** infringements of this Regulation and Regulation (EEC) No 3821/85 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EEC) No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second subparagraph of Article 29. The Commission shall inform Member States accordingly.

1. Member States shall, **on a proposal from the Commission**, lay down rules on a **common range of** infringements of this Regulation and Regulation (EEC) No 3821/85, **divided into categories according to their gravity. The Member States shall provide for penalties for such infringements** and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EEC) No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second subparagraph of Article 29. The Commission shall inform Member States accordingly.

Justification

This amendment concerning the classification of infringements and not of penalties upholds the subsidiarity principle and leaves the third pillar untouched.

Amendment 44 ARTICLE 21

Where a Member State considers that there has been an infringement of this Regulation which is of a kind that is clearly liable to endanger road safety, it shall be empowered to proceed with immobilisation of the vehicle concerned until such time as the cause of the infringement has been

The penalties applied by the Member States shall include temporary immobilisation of the vehicle concerned until such time as the cause of the infringement has been rectified. Member States may compel the driver to take a daily rest period. Member States may also withdraw, suspend or restrict an

rectified. Member States may compel the driver to take a daily rest period. Member States may also withdraw, suspend or restrict an undertaking's licence, if the undertaking is established in that Member State, or withdraw, suspend or restrict a driver's driving licence. The Committee referred to in Article 24(2) shall develop guidelines with a view to promoting a harmonised application of this Article.

undertaking's licence, if the undertaking is established in that Member State, or withdraw, suspend or restrict a driver's driving licence. The Committee referred to in Article 24(2) shall develop guidelines with a view to promoting a harmonised application of this Article.

Justification

It would make sense to have unambiguous, uniform rules on the immobilisation of vehicles, because this measure has a very strong dissuasive effect, and ensures a more uniform approach on the part of the inspection bodies in the individual Member States.

Amendment 45

ARTICLE 22, PARAGRAPH 3 A (new)

3a. The Commission shall support dialogue between Member States concerning national interpretation and application of this Regulation. By two years after the entry into force of this Regulation at the latest, the Commission shall submit a proposal containing uniform rules on interpretation and application, for the benefit of national supervisory authorities.

Justification

Reinserts Amendment 68 from first reading (P5 TA-PROV(2003)0008).

Amendment 46

ARTICLE 24, PARAGRAPH 1 A (new)

1a. The European social partners shall participate in the committee's deliberations as observers and shall in particular be consulted in relation to the tasks mentioned in Article 25(1).

Justification

Reinserts Amendment 67 from first reading (P5 TA-PROV(2003)0008).

Amendment 47
ARTICLE 26, POINT 4, INDENT 5
Article 15, paragraph 7, point (a), point (i) (Regulation (EEC) No 3821/85)

(i) the record sheets for the **current week** and those used by the driver in the previous **15 days**;

(i) the record sheets for the **last day worked** and those used by the driver in the previous **28 days**;

Justification

This is intended to ensure that checks cover 28 days as soon as the Regulation comes into force and not, as the proposal provides, only with effect from 1 January 2008.

Amendment 48
ARTICLE 26, POINT 4, INDENT 5
Article 15, paragraph 7, point (a), point (iii) (Regulation (EEC) No 3821/85)

(iii) any manual record and printout made during the **current week** and the previous **15 days** as required under this Regulation and Regulation (EEC) No*.

(iii) any manual record and printout made during the **last day worked** and the previous **28 days** as required under this Regulation and Regulation (EEC) No*.

Justification

This is intended to ensure that checks cover 28 days as soon as the Regulation comes into force and not, as the proposal provides, only with effect from 1 January 2008.

Amendment 49
ARTICLE 26, POINT 4, INDENT 5
Article 15, paragraph 7, point (a), concluding sentence (Regulation (EEC) No 3821/85)

However, after 1 January 2008, the time periods referred to under (i) and (iii) shall cover the current day and the previous 28 days. **deleted**

Justification

This is intended to ensure that checks cover 28 days as soon as the Regulation comes into force and not, as the proposal provides, only with effect from 1 January 2008.

Amendment 50
ARTICLE 26, POINT 4, INDENT 5
Article 15, paragraph 7, point (b), point (ii) (Regulation (EEC) No 3821/85)

(ii) any manual record and printout made during the **current week** and the previous **15 days** as required under this Regulation and Regulation (EEC) No*, and

(ii) any manual record and printout made during the **last day worked** and the previous **28 days** as required under this Regulation and Regulation (EEC) No*, and

Justification

This is intended to ensure that checks cover 28 days as soon as the Regulation comes into force and not, as the proposal provides, only with effect from 1 January 2008.

Amendment 51

ARTICLE 26, POINT 4, INDENT 5

Article 15, paragraph 7, point (b), concluding sentence (Regulation (EEC) No 3821/85)

However, after 1 January 2008, the time periods referred to under (ii) shall cover the current day and the previous 28 days. ***deleted***

Justification

This is intended to ensure that checks cover 28 days as soon as the Regulation comes into force and not, as the proposal provides, only with effect from 1 January 2008.

Amendment 52

ARTICLE 27, POINT 1

Article 2, paragraph 1, point (a) (Regulation (EEC) No 2135/98)

1. (a) After ***5 August 2005, vehicles put into service for the first time*** shall be fitted with recording equipment in accordance with the requirements of Annex IB to Regulation (EEC) No 3821/85.

1. (a) ***All vehicles manufactured after 5 August 2006*** shall be fitted with recording equipment in accordance with the requirements of Annex IB to Regulation (EEC) No 3821/85. ***After 5 August 2007, all vehicles put into service for the first time shall be fitted with recording equipment in accordance with the requirements of Annex IB to Regulation (EEC) No 3821/85.***

Justification

These two starting dates are realistic, since trade and industry need clear dates. A transitional period should be introduced to allow for retrofitting of vehicles which have already been manufactured, but which have not yet been put into service.

Amendment 53

ARTICLE 27, POINT 1 A (new)

Article 2, paragraph 1, point (b a) (new) (Regulation (EEC) No 2135/98)

1a. In Article 2 the following point (ba) shall be inserted after paragraph 1(b):

"(ba) No later than 36 months after the entry into force of Regulation (EEC) *, all vehicles falling within the scope of this Regulation must be fitted with recording equipment in accordance with the requirements of Annex IB to Regulation

(EC) No 2135/98."

Justification

This amendment reintroduces the position at first reading with regard to the compulsory fitting of the new digital recording equipment to all vehicles.

Amendment 54

ARTICLE 27, POINT 2

Article 2, paragraph 2 (Regulation (EEC) No 2135/98)

"2. Member States shall take the necessary measures to ensure that they are able to issue driver cards at the latest ***on 5 May 2005.***"

"2. Member States shall take the necessary measures to ensure that they are able to issue driver cards at the latest ***two months after the entry into force of Regulation (EEC)***"

Justification

Since it cannot yet be predicted when the legislative procedure will be completed, the above wording seems more appropriate than the arbitrary setting of a date which may already have been superseded by the time the Regulation comes into force.

EXPLANATORY STATEMENT

I. Introduction

As part of the codecision procedure, on 14 January 2003 Parliament concluded its first reading on the Commission's proposal on the harmonisation of certain social legislation relating to road transport (COM(2001)0573).

This proposal abrogates Regulation (EEC) No 3820/85 and replaces it with a new regulation. The Commission's aim is to clarify, simplify and update the rules contained in the current Regulation. The Commission is seeking to define the scope of the provisions more clearly, firstly by setting out more comprehensively when the AETR (European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport) and when the regulation should apply, and secondly by setting out the categories of goods and passenger vehicles affected (goods vehicles over 3.5 tonnes and passenger vehicles suitable for carrying over 9 persons). The number of current exceptions is also reduced in order to reflect changes in the road transport sector.

Definitive definitions are given in the proposal for the concepts used in the existing Regulation, in order to avoid different individual interpretations, which in the past have led to legal action. In addition, the obligations of employees and employers have been laid down more clearly, with the primary aim of ensuring that they are able to be enforced more effectively.

A new and important element introduced by this proposal is the possibility of applying the regulation extraterritorially. Member States will be able to impose penalties for infringements of the provisions of the regulation committed by drivers in another Member State.

II. First reading - The most important amendments by Parliament

The most important amendments tabled by Parliament to the Commission proposal are as follows:

- It has formulated new definitions or made definitions in the proposal more precise in order to achieve greater legal certainty and flexibility for all those involved in road transport. It should be noted that a number of terms used in the proposal are either not defined at all (for example, a definition of 'driving time'), or not adequately defined. The definition of regular daily rest periods, for example, as proposed by Parliament (12 hours), allows greater flexibility, since it may be divided into two periods (9 and 3 hours).
- The derogations both at Community and at national level have been clarified in order to meet the requirements of road safety and fair competition. At the same time exceptions have been added in order to take into account the special character of certain services (postal services) or special situation of certain businesses (milk producers).

The concept of the flexible week has been abolished, in order to be consistent with the

Directive on working time in road transport (2002/15/EC). The flexible week has been replaced by the calendar week.

- The provisions contained in the current regulation on the minimum age for long-distance drivers are reintroduced.
- A system of harmonised penalties is introduced which respects the requirement of non-discrimination and under which penalties are divided into different categories according to the severity of the infringement.
- Application of the Regulation to transportation by vehicles registered in a third country which is not a contracting party to the AETR agreement for the section of the route lying within Community territory. This prevents distortions of competition.
- The Commission is required to submit a proposal at the latest six months after the publication of the regulation which provides, inter alia, for the mandatory fitting of all vehicles covered by this regulation with an electric tachograph at the latest 36 months after its entry into force.

III. The core elements of the Council's common position

A scrutiny of the common position leads your rapporteur to the conclusion that the Council has essentially respected the spirit of the Commission proposal and has also taken Parliament's opinion fully into account. The following aspects of the common position differ from existing legislation:

- The minimum uninterrupted daily rest period is increased from 8 to 9 hours;
- The maximum driving time per calendar week is reduced to 56 hours (according to the existing Regulation 76 hours are allowed);
- During two consecutive weeks, the driver must take at least one regular weekly rest period consisting of an uninterrupted period of at least 45 hours;
- A legal framework is created under which Member States may impose penalties, for example they may immobilise temporarily a vehicle, withdraw, suspend or restrict an undertaking's licence or a driver's driving licence. These penalties may be imposed even in cases of extraterritoriality.
- The number of derogations at Community level is reduced;
- Under certain conditions third parties (consignors, freight forwarders and tour operators) may be held liable for infringements of this regulation.

Finally, there is a new point in the common position which satisfies Parliament's and the Commission's demands. The Council has amended Regulation 3821/85/EC on digital tachographs so that inspectors are now able to check the periods up to 15 days before the current week. From 2008 this period will be increased to 28 days. There are also plans to introduce the digital control equipment from 5 August 2005.

IV. Concluding remarks

A comparison between Parliament's position in first reading and the common position shows clearly that the Council has taken on board a substantial number of Parliament's amendments. A number of amendments may be mentioned which are important for our committee: for example, the replacement of the flexible week by the calendar week (Amendments 1 and 33); the fact that a weekly rest period that falls in two weeks may now only be counted for one of the two weeks (44); the obligation for other links in the transport chain to comply with the regulation (48); the fact that Member States are entitled to exempt postal delivery (54) and the transport of animal waste (58) at national level from the scope of the regulation; the obligation of undertakings to preserve all data relevant for the application of the regulation over a period of one year (62) and, finally, the possibility of taking a vehicle into safekeeping in the event of serious infringements (65).

The Council also partially accepted Parliament's proposal that the regular daily rest periods may be taken in two parts consisting of 9 and 3 hours respectively (31). The Council also views it as a compromise that reduced weekly rest periods may be taken in the vehicle. It is recalled that Parliament provides for this measure only in the case of daily rest periods (107). The derogations provided for in Amendments 23 and 24 (transport of dairy products, special sewerage vehicles, etc.) are only allowed at national level, instead of at Community level.

On the other hand, the Council has rejected a number of important amendments by Parliament: for example, the changes referring to the AETR agreement, the definition of driving time (29) and the minimum age for long-distance drivers (35). The Council has also rejected the amendment on the common range of penalties (64).

In order to ensure that Parliament's position is taken on board, your rapporteur intends to reintroduce the core amendments from the first reading which were not adopted by the Council. Nevertheless, your rapporteur considers it important to stress that, despite existing differences, it might be possible to conclude this matter in second reading. As part of negotiations with the Council an attempt will be made to achieve a compromise in order to avoid conciliation and to accelerate the entry into force of this regulation. This regulation is an attempt **to enhance road safety, ensure fair competition and protect the social interests of persons involved in road transport**. Both institutions have a duty to act as swiftly as possible to meet those three objectives.

PROCEDURE

Title	Council common position for adopting a regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98
References	11337/2/2004 – C6-0250/2004 – 2001/0241(COD)
Legal basis	Articles 251(2) and 71
Basis in Rules of Procedure	Rule 62
Date of Parliament's first reading – P5	14.1.2003 P5_TA(2003)0008
Commission proposal	COM(2001)0573 – C6-0250/2004
Amended Commission proposal	COM(2003)0490
Date receipt of common position announced in plenary	16.12.2004
Committee responsible Date announced in plenary	TRAN 16.12.2004
Rapporteur(s) Date appointed	Helmuth Markov 28.7.2004
Previous rapporteur(s)	Helmuth Markov
Discussed in committee	20.1.2005 2.2.2005 14.3.2005
Date adopted	15.3.2005
Result of final vote	for: 31 against: 9 abstentions: 6
Members present for the final vote	Margrete Auken, Inés Ayala Sender, Etelka Barsi-Pataky, Philip Bradbourn, Paolo Costa, Michael Cramer, Arūnas Degutis, Christine De Veyrac, Armando Dionisi, Saïd El Khadraoui, Emanuel Jardim Fernandes, Luis de Grandes Pascual, Mathieu Grosch, Ewa Hedkvist Petersen, Jeanine Hennis-Plasschaert, Stanisław Jałowiecki, Georg Jarzembowski, Dieter-Lebrecht Koch, Jaromír Kohlíček, Jörg Leichtfried, Fernand Le Rachinel, Bogusław Liberadzki, Evelin Lichtenberger, Patrick Louis, Erik Meijer, Michael Henry Natrass, Robert Navarro, Janusz Onyszkiewicz, Josu Ortuondo Larrea, Willi Piecyk, Reinhard Rack, Luca Romagnoli, Gilles Savary, Ingo Schmitt, Renate Sommer, Ulrich Stockmann, Gary Titley, Marta Vincenzi, Corien Wortmann-Kool, Roberts Zīle
Substitutes present for the final vote	Jean Louis Cottigny, Den Dover, Anne Elisabet Jensen, Antonio López-Istúriz White, Helmuth Markov
Substitutes under Rule 178(2) present for the final vote	
Date tabled – A6	23.3.2005 A6-0076/2005
Comments	...