

COUNCIL REGULATION (EEC) No 3820/85

of 20 December 1985

on the harmonization of certain social legislation relating to road transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof;

Having regard to the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway (1), and in particular Section III thereof,

Having regard to the proposal from the Commission (2),

Having regard to the opinion of the European Parliament (3),

Having regard to the opinion of the Economic and Social Committee (4),

Whereas in the field of road transport, Community social legislation is set out in Regulation (EEC) No 543/69 (5) as last amended by Regulation (EEC) No 2829/77 (6); whereas that legislation aims at the harmonization of conditions of competition between methods of inland transport, especially with regard to the road sector and the improvement of working conditions and road safety; whereas progress made in these fields must be safeguarded and extended; whereas, however, it is necessary to make the provisions of the said Regulation more flexible without undermining their objectives;

Whereas, taking into account the amendments set out hereinafter, in order to clarify matters, all the relevant provisions should be brought together in a single text, and in consequence thereof, Regulation (EEC) No 543/69 should be repealed; whereas, however, the exemptions set out in Article 4 for certain vehicles and the provisions of Article 15 for certain passenger transport operations should be maintained in force for a certain time;

Whereas the provisions of this Regulation dealing with working conditions cannot be allowed to prejudice the right of the two sides of industry to lay down, by collective bargaining or otherwise, provisions more favourable to workers; whereas, in order not only to promote social progress but also to improve road safety, each Member State must retain the right to adopt certain appropriate measures;

Whereas in view of the fall in the number of drivers' mates and conductors it is no longer necessary to regulate the rest periods of crew members other than the driver;

Whereas the replacement of the flexible week by a fixed week would make it easier for drivers to organize their work and improve checking;

Whereas a system should be defined to apply to international road transport operations to or from a third country or between two countries in transit through the territory of a Member State; whereas the provisions of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of 1 July 1970 should apply to those transport operations; whereas in the case of vehicles registered in a State which is not a Contracting Party to AETR, those provisions will only apply to that part of the journey effected within the Community;

Whereas, since the subject matter of the AETR Agreement falls within the scope of this Regulation, the power to negotiate and conclude the Agreement lies with the Community; whereas, however, the particular circumstances in which the AETR negotiations took place warrant, by way of exception, a procedure whereby the Member States of the Community individually deposit the instruments of

ratification or accession in a concerted action but nonetheless act in the interest and on behalf of the Community;

Whereas, in order to ensure the supremacy of Community law in intra-Community transport, Member States should enter a reservation when depositing their instruments of ratification or accession whereby international transport operations between Member States are not to be regarded as international transport operations within the meaning of the Agreement;

Whereas the possibilities provided for in the Agreement itself for bilateral agreements between Contracting Parties derogating from the said Agreement as regards frontier zone and transit transport operations are a matter which in principle fall within the competence of the Community;

Whereas, if an amendment to the internal Community rules in the field in question necessitates a corresponding amendment to the Agreement, the Member States will act jointly to obtain such an amendment to the Agreement in accordance with the procedure laid down therein;

Whereas certain transport operations may be exempted from the application of this Regulation;

Whereas it is desirable to amplify and clarify certain definitions and to bring up to date certain provisions, in particular concerning the exceptions for certain categories of vehicles;

Whereas it is desirable to lay down provisions concerning the minimum ages for drivers engaged in the carriage of goods or of passengers - bearing in mind here certain vocational training requirements - and concerning also the minimum age for drivers' mates and conductors; whereas for the purposes of vocational training, Member States must be able to reduce the approved minimum age for drivers mates to 16 years;

Whereas, with regard to driving periods, it is desirable to set limits on continuous driving time and on daily driving time, but without prejudice to any national rules whereby drivers are prohibited from driving for longer than they can with complete safety;

Whereas a longer driving day, together with a shorter driving time over a two-week period is likely to facilitate the management of transport undertakings and to contribute to social progress;

Whereas the provisions on breaks in driving should be adjusted because of the longer daily driving time;

Whereas, with regard to rest periods, it is desirable to lay down the minimum duration of and other conditions governing the daily and weekly rest periods of crew members;

Whereas trips would be made easier if the driver were able to split up his daily rest period, in particular to avoid his having to take a meal and lodging in the same place;

Whereas it is beneficial to social progress and to road safety to lengthen weekly rest periods, while enabling these periods to be shortened, provided that the driver can compensate for parts of his rest period which have not been taken in a place of his choosing within a given time;

Whereas many road transport operations within the Community involve transport by ferryboat or by rail for part of the journey; whereas provisions regarding daily rest periods and breaks which are appropriate to such operations should therefore be provided for in the rules;

Whereas, in the interests of road safety, the payment of bonuses for distance travelled and/or tonnage carried which might endanger road safety must be prohibited;

Whereas it is desirable to provide that exceptions may be made from this Regulation for certain national transport operations with special characteristics; whereas in the event of exceptions Member States should ensure that the standard of social protection and road safety is not jeopardized;

Whereas it is justified, given the specific nature of passenger transport, to redefine the category of vehicles that the Member States may exempt from application of the Regulation in the field of national transport;

Whereas the Member States should be entitled, with the Commission's authorization, to grant exceptions from the provisions of the Regulation in exceptional circumstances; whereas in urgent cases, it should be possible to grant these exceptions for a limited time without prior authorization from the Commission;

Whereas in the case of drivers of vehicles used for regular passenger services, a copy of the timetable and an extract from the undertaking's duty roster may replace the recording equipment; whereas it would be useful for the application of this Regulation and the prevention of abuse, to have delivered to drivers who so request extracts from their duty rosters;

Whereas it is desirable, in the interest of effective control, that regular international passenger services, with the exception of certain border services should no longer be exempt from the obligation to install and use recording equipment;

Whereas it is desirable to emphasize the importance of and the need for compliance with this Regulation by employers and drivers;

Whereas the Commission should monitor the way the situation with Member States develops and submit to the Council and to the European Parliament a report on the application of the rules every two years;

Whereas, in order that this Regulation may be applied and that compliance therewith may be checked, it is appropriate for Member States to give each other assistance,

HAS ADOPTED THIS REGULATION:

SECTION I

Definitions

Article 1

In this Regulation:

1. 'carriage by road' means any journey made on roads open to the public of a vehicle, whether laden or not, used for the carriage of passengers or goods; 2. 'vehicles' means motor vehicles, tractors, trailers and semi-trailers, defined as follows:

(a) 'motor vehicle': any mechanically self-propelled vehicle circulating on the road, other than a vehicle running on rails, and normally used for carrying passengers or goods;

(b) 'tractor': any mechanically self-propelled vehicle circulating on the road, other than a vehicle running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines;

(c) 'trailer': any vehicle designed to be coupled to a motor vehicle or a tractor;

(d) 'semi-trailer': a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle;

3. 'driver' means any person who drives the vehicle even for a short period, or who is carried in the vehicle in order to be available for driving if necessary;

4. 'week' means the period between 00.00 hours on Monday and 24.00 hours on Sunday;

5. 'rest' means any uninterrupted period of at least one hour during which the driver may freely dispose of his time;

6. 'permissible maximum weight' means the maximum authorized operating weight of the vehicle fully laden;

7. 'regular passenger services' means national and inter- national services as defined in Article 1 of Council Regulation No 117/66/EEC of 28 July 1966 on the introduction of common rules for the international carriage of passengers by coach and bus (1).

SECTION II

Scope

Article 2

1. This Regulation applies to carriage by road, as defined in Article 1 (1), within the Community.

2. The European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) shall apply instead of the present rules to international road transport operations:

- to and/or from third countries which are Contracting Parties to the Agreement, or in transit through such countries, for the whole of the journey where such operations are carried out by vehicles registered in a Member State or in one of the said third countries;

- to and/or from a third country which is not a Contracting Party to the Agreement in the case of any journey made within the Community where such operations are carried out by vehicles registered in one of those countries.

Article 3

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

Article 4

This Regulation shall not apply to carriage by:

1. vehicles used for the carriage of goods where the maximum permissible weight of the vehicle, including any trailer or semi-trailer, does not exceed 3,5 tonnes;

2. vehicles used for the carriage of passengers which, by virtue of their construction and equipment, are suitable for carrying not more than nine persons, including the driver, and are intended for that purpose;

3. vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;

4. vehicles with a maximum authorized speed not exceeding 30 kilometres per hour;

5. vehicles used by or under the control of the armed services, civil defence, fire services, and forces responsible for maintaining public order;

6. vehicles used in connection with the sewerage, flood protection, water, gas and electricity services, highway maintenance and control, refuse collection and disposal, telegraph and telephone services, carriage of postal articles, radio and television broadcasting and the detection of radio or television transmitters or receivers;

7. vehicles used in emergencies or rescue operations;
8. specialized vehicles used for medical purposes;
9. vehicles transporting circus and fun-fair equipment;
10. specialized breakdown vehicles;
11. vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;
12. vehicles used for non-commercial carriage of goods for personal use;
13. vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed.

SECTION III

Crew

Article 5

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

(a) for vehicles, including, where appropriate, trailers or semi-trailers, having a permissible maximum weight of not more than 7,5 tonnes, 18 years;

(b) for other vehicles:

- 21 years, or

- 18 years provided that the person concerned holds a certificate of professional competence recognized 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.

2. Any driver engaged in the carriage of passengers shall have reached the age of 21 years.

Any driver engaged in the carriage of passengers on journeys beyond a 50 kilometre radius from the place where the vehicle is normally 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 permissible maximum weight exceeding 3,5 tonnes;

(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 normally based, or other types of passenger services not subject to this Regulation, provided the competent authority considers that he has by so doing acquired the necessary experience;

(c) he must hold a certificate of professional competence recognized 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.

3. The minimum age for drivers' mates and conductors shall be 18 years.

4. A driver engaged in the carriage of passengers shall not be subject to the conditions laid down in paragraph 2, second subparagraph, (a), (b) and (c) if he has carried on that occupation for at least one year prior to 1 October 1970.

5. In the case of internal transport operations carried out within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centres of which are situated within that radius, Member States may reduce the minimum age for drivers' mates to 16 years, on condition that this is for purposes of vocational training and subject to the limits imposed by their national law on employment matters.

SECTION IV

Driving periods

Article 6

1. The driving period between any two daily rest periods or between a daily rest period and a weekly rest period, hereinafter called 'daily driving period', shall not exceed nine hours. It may be extended twice in any one week to 10 hours.

A driver must, after no more than six daily driving periods, take a weekly rest period as defined in Article 8 (3).

The weekly rest period may be postponed until the end of the sixth day if the total driving time over the six days does not exceed the maximum corresponding to six daily driving periods.

In the case of the international carriage of passengers, other than on regular services, the terms 'six' and 'sixth' in the second and third subparagraphs shall be replaced by 'twelve' and 'twelfth' respectively.

Member States may extend the application of the previous subparagraph to national passenger services within their territory, other than regular services.

2. The total period of driving in any one fortnight shall not exceed 90 hours.

SECTION V

Breaks and rest periods

Article 7

1. After four-and-a-half hours' driving, the driver shall observe a break of at least 45 minutes, unless he begins a rest period.

2. This break may be replaced by breaks of at least 15 minutes each distributed over the driving period or immediately after this period in such a way as to comply with the provisions of paragraph 1.

3. By way of exception from paragraph 1, in the case of national carriage of passengers on regular services Member States may fix the minimum break at not less than 30 minutes after a driving period not exceeding four hours. Such exceptions may be granted only in cases where breaks in driving of over 30 minutes could hamper the flow of urban traffic and where it is not possible for drivers to take a 15-minute break within four-and-a-half hours of driving prior to a 30-minute break.

4. During these breaks, the driver may not carry out any other work. For the purposes of this Article, the waiting time and time not devoted to driving spent in a vehicle in motion, a ferry, or a train shall not be regarded as 'other work'.

5. The breaks observed under this Article may not be regarded as daily rest periods. Article 8

1. In each period of 24 hours, the driver shall have a daily rest period of at least 11 consecutive hours, which may be reduced to a minimum of nine consecutive hours not more than three times in any one week, on condition that an equivalent period of rest be granted as compensation before the end of the following week.

On days when the rest is not reduced in accordance with the first subparagraph, it may be taken in two or three separate periods during the 24-hour period, one of which must be of at least eight consecutive hours. In this case the minimum length of the rest shall be increased to 12 hours.

2. During each period of 30 hours when a vehicle is manned by at least two drivers, each driver shall have a rest period of not less than eight consecutive hours.

3. In the course of each week, one of the rest periods referred to in paragraphs 1 and 2 shall be extended, by way of weekly rest, to a total of 45 consecutive hours. This rest period may be reduced to a minimum of 36 consecutive hours if taken at the place where the vehicle is normally based or where the driver is based, or to a minimum of 24 consecutive hours if taken elsewhere. Each reduction shall be compensated by an equivalent rest taken en bloc before the end of the third week following the week in question.

4. A weekly rest period which begins in one week and continues into the following week may be attached to either of these weeks.

5. In the case of the carriage of passengers to which Article 6 (1), fourth or fifth subparagraph, applies, the weekly rest period may be postponed until the week following that in respect of which the rest is due and added on to that second week's weekly rest.

6. Any rest taken as compensation for the reduction of the daily and/or weekly rest periods must be attached to another rest of at least eight hours and shall be granted, at the request of the person concerned, at the vehicle's parking place or driver's base.

7. The daily rest period may be taken in a vehicle, as long as it is fitted with a bunk and is stationary.

Article 9

Notwithstanding Article 8 (1) where a driver engaged in the carriage of goods or passengers accompanies a vehicle which is transported by ferryboat or train, the daily rest period may be interrupted not more than once, provided the following conditions are fulfilled:

- that part of the daily rest period spent on land must be able to be taken before or after the portion of the daily rest period taken on board the ferryboat or the train,
- the period between the two portions of the daily rest period must be as short as possible and may on no account exceed one hour before embarkation or after disembarkation, customs formalities being included in the embarkation or disembarkation operations,
- during both portions of the rest period the driver must be able to have access to a bunk or couchette.

The daily rest period, interrupted in this way, shall be increased by two hours.

SECTION VI

Prohibition of certain types of payment

Article 10

Payments to wage-earning drivers, even in the form of bonuses or wage supplements, related to distances travelled and/or the amount of goods carried shall be prohibited, unless these payments are of such a kind as not to endanger road safety.

SECTION VII

Exceptions

Article 11

Each Member may apply higher minima or lower maxima than those laid down in Articles 5 to 8 inclusive. Nevertheless, the provisions of this Regulation shall remain applicable to drivers engaged in international transport operations on vehicles registered in another Member State.

Article 12

Provided that road safety is not thereby jeopardized and to enable him to reach a suitable stopping place, the driver may depart from the provisions of this Regulation to the extent necessary to ensure the safety of persons, of the vehicle or of its load. The driver shall indicate the nature of and reason for his departure from those provisions on the record sheet of the recording equipment or in his duty roster.

Article 13

1. Each Member State may grant exceptions on its own territories or, with the agreement of the States concerned, on the territory of another Member State from any provision of this Regulation applicable to carriage by means of a vehicle belonging to one or more of the following categories:

(a) vehicles used for carrying passengers, which by virtue of their construction and equipment are suitable for carrying not more than 17 persons, including the driver, and are intended for that purpose; (b) vehicles used by public authorities to provide public services which are not in competition with professional road hauliers;

(c) vehicles used by agricultural, horticultural, forestry or fishery undertakings for carrying goods within a 50 kilometre radius of the place where the vehicle is normally based, including local administrative areas the centres of which are situated within that radius;

(d) vehicles used for carrying animal waste or carcases which are not intended for human consumption;

(e) vehicles used for carrying live animals from farms to the local markets and vice versa or from markets to the local slaughterhouses;

(f) vehicles used as shops at local markets or for door-to-door selling, or used for mobile banking, exchange or saving transactions, for worship, for the lending of books, records or cassettes, for cultural events or exhibitions, and specially fitted for such uses;

(g) vehicles carrying material or equipment for the driver's use in the course of his work within a 50 kilometre radius of the place where the vehicle is normally based, provided that driving the vehicle does not constitute the driver's main activity and that the exception does not seriously prejudice the objectives of the Regulation. The Member States may make such exceptions subject to individual authorization;

(h) vehicles operating exclusively on islands not exceeding 2 300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles;

(i) vehicles used for the carriage of goods and propelled by means of gas produced on the vehicle or of electricity or equipped with a governor in so far as such vehicles are regarded, under the legislation of the Member State of registration, as equivalent to vehicles propelled by a petrol or diesel engine, the

maximum permissible weight of which, including the weight of trailers or semi-trailers, does not exceed 3,5 tonnes;

(j) vehicles used for driving instruction with a view to obtaining a driving licence;

(k) tractors used exclusively for agricultural and forestry work.

Member States shall inform the Commission of the exceptions granted under this paragraph.

2. Member States may, after authorization by the Commission, grant exceptions from the application of the provisions of this Regulation to transport operations carried out in exceptional circumstances, if such exceptions do not seriously jeopardize the objectives of the Regulation.

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

The Commission shall notify the other Member States of any exception granted pursuant to this Regulation.

SECTION VIII

Control procedures and penalties

Article 14

1. In the case of

- regular national passenger services, and

- regular international passenger services whose route terminals are located within a distance of 50 kilometres as the crow flies from a frontier between two Member States and whose route length does not exceed 100 kilometres,

which are subject to this Regulation, a service timetable and a duty roster shall be drawn up by the undertaking.

2. The duty roster shall show, in respect of each driver, the name, place where based and the schedule laid down in advance for various periods of driving, other work and availability.

3. The duty roster shall include all the particulars specified in paragraph 2 for a minimum period covering both the current week and the weeks immediately preceding and following that week.

4. The duty roster shall be signed by the head of the undertaking or by a person authorized to represent him.

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

6. The duty roster shall be kept by the undertaking for one year after expiry of the period covered. The undertaking shall give an extract from the roster to the drivers concerned who request it.

7. This Article shall not apply to the drivers of vehicles fitted with recording equipment used in accordance with the provisions of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (1).

Article 15

1. The transport undertaking shall organize drivers' work in such a way that drivers are able to comply with the relevant provisions of this Regulation and of Regulation (EEC) No 3821/85.
2. The undertaking shall make periodic checks to ensure that the provisions of these two Regulations have been complied with. If breaches are found to have occurred, the undertaking shall take appropriate steps to prevent their repetition.

Article 16

1. The Commission shall produce a report every two years on the implementation of this Regulation by Member States and developments in the fields in question. The Commission shall forward the report to the Council and the European Parliament within 13 months of expiry of the two-year period covered by the report.
2. To enable the Commission to draw up the report referred to in paragraph 1, Member States shall communicate the necessary information to the Commission every two years, using a standard form. This information must reach the Commission not later than 30 September following the date on which the two-year period covered by the report expires.
3. The Commission shall draw up the standard form after consulting the Member States.

Article 17

1. Member States shall, in due time and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation.

Such measures shall cover, inter alia, the organization of, procedure for and means of control and the penalties to be imposed in case of breach.

2. Member States shall assist each other in applying this Regulation and in checking compliance therewith.
3. Within the framework of this mutual assistance the competent authorities of the Member States shall regularly send one another all available information concerning:
 - breaches of this Regulation committed by non-residents and any penalties imposed for such breaches;
 - penalties imposed by a Member State on its residents for such breaches committed in other Member States.

SECTION IX

Final provisions

Article 18

1. Regulation (EEC) No 543/69 is hereby repealed.

However:

- Article 4 of the said Regulation shall, until 31 December 1989, continue to apply to vehicles used by public authorities for public services which do not compete with commercial transport undertakings and to tractors used solely for local agricultural and forestry work. A Member State may, nevertheless, provide that this Regulation will apply to such national transport operations within its territory from an earlier date.

- Article 15 of the said Regulation shall, until 31 December 1989, continue to apply to vehicles and drivers employed in regular international passenger services in so far as the vehicles used for such services are not fitted with recording equipment used as prescribed in Regulation (EEC) No 3821/85.

2. References to the Regulation repealed under paragraph 1 shall be construed as references to this Regulation.

Article 19

This Regulation shall enter into force on 29 September 1986.

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

Done at Brussels, 20 December 1985.

For the Council

The President

R. KRIEPS

(1) OJ No 88, 24 5. 1965, p. 1500/65.

(2) OJ No C 100, 12. 4. 1984, p. 3, and OJ No C 223, 3. 9. 1985, p. 5.

(3) OJ No C 122, 20. 5. 1985, p. 168.

(4) OJ No C 104, 25. 4. 1985, p. 4, and OJ No C 303, 25. 11. 1985, p. 29.

(5) OJ No L 77, 29. 3. 1969, p. 49.

(6) OJ No L 334, 24. 12. 1977, p. 1.

(1) OJ No 147, 9. 8. 1966, p. 2688/66.

(1) See page 8 of this Official Journal.