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COUNCIL DIRECTIVE

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 transport

(88/599/EEC)

(OJ L 325, 29.11.1988, p. 55)

Amended by:

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COUNCIL DIRECTIVE

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**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 transport**

(88/599/EEC)

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 proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Having regard to the resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council, of 20 December 1985 to improve the implementation of the social regulations in road transport⁽⁴⁾,

Whereas Regulations (EEC) No 3820/85⁽⁵⁾ and (EEC) No 3821/85⁽⁶⁾ are important for the creation of a common market for inland transport services;

Whereas proper application of the social regulations in road transport requires uniform and effective checking by Member States;

Whereas it is necessary to introduce minimum requirements to check compliance with the relevant provisions in order to reduce and prevent infringements;

Whereas the Portuguese Republic has only recently introduced checking procedures in road transport and should accordingly be permitted to defer the date of application of this Directive;

Whereas effective and efficient control throughout the Community will require the exchange of information on, and mutual assistance in, the enforcement of the regulations in Member States;

Whereas the exchange of information is compulsory and should take place at regular intervals;

Whereas uniform application of the social regulations on road transport is necessary to avoid distortions of competition between transport undertakings as well as to promote road safety and social progress,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Checks

The objective of this Directive is to lay down minimum conditions for checking the correct and uniform application of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

⁽¹⁾ OJ No C 116, 3. 5. 1988, p. 17.

⁽²⁾ Opinion delivered on 17 November 1988 (not yet published in the Official Journal).

⁽³⁾ OJ No C 208, 8. 8. 1988, p. 26.

⁽⁴⁾ OJ No C 348, 31. 12. 1985, p. 1.

⁽⁵⁾ OJ No L 370, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 370, 31. 12. 1985, p. 8.

▼B*Article 2***Checking systems**

1. Member States shall organize a system for appropriate and regular checks, both at the roadside and at premises of undertakings, covering each year a large and representative cross-section of drivers, undertakings and vehicles of all transport categories falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.
2. Each Member State shall organize checks in such a way that:
 - they cover each year at least 1 % of days worked by drivers of vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85,
 - not less than 15 % of the total number of the working days checked shall be checked at the roadside and not less than 25 % at the premises of undertakings.
3. The number of drivers checked at the roadside, the number of checks at premises of undertakings, the number of working days checked and the number of infringements reported shall be included, *inter alia*, in the information submitted to the Commission in accordance with Article 16 (2) of Regulation (EEC) No 3820/85.

*Article 3***Roadside checks**

1. Roadside checks shall be organized in different places at any time, covering a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.

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2. The elements of roadside checks are:
 - daily driving periods, breaks and daily rest periods; in the case of clear indications of irregularities, also the preceding days' record sheets which have to be carried on board the vehicle in accordance with Article 15(7) of Regulation (EEC) No 3821/85 as amended by Regulation (EC) No 2135/98⁽¹⁾ and/or the data stored for the same period on the driver card and/or in the memory of the recording equipment in conformity with Annex IB,
 - for the period referred to in Article 15(7) of Regulation (EEC) No 3821/85, any cases where the vehicle's authorised speed is exceeded, to be defined as being any periods of more than 1 minute during which the vehicle's speed exceeds 90 km/h for category N₃ vehicles or 105 km/h for category M₃ vehicles (categories N₃ and M₃ being as defined in Annex I to Directive 70/156/EEC)⁽²⁾,
 - where appropriate, momentary speeds attained by the vehicle as recorded by the recording equipment in no more than the previous 24 hours' use of the vehicle,
 - last weekly rest period, where appropriate,
 - correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets) or, where appropriate, presence of the documents referred to in Article 14(5) of Regulation (EEC) No 3820/85.

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3. Roadside checks shall be carried out without discrimination of vehicles and drivers, whether resident or not.

⁽¹⁾ Council Regulation (EC) No 2135/98 of 24 September 1998 amending Regulation (EEC) No 3821/85 on recording equipment in road transport and Directive 88/599/EEC concerning the procedures for applying Regulations (EEC) No 3820/85 and (EEC) No 3821/85 (OJ L 274, 9.10.1998, p. 1).

⁽²⁾ Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ L 42, 23.2.1970, p. 1). Directive as last amended by Directive 97/27/EC (OJ L 233, 25.8.1997, p. 1).

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4. To facilitate the authorized inspecting officer's task, they shall be provided with:

- a list of the principal points to be checked,
- a language chart containing the expressions currently used and relating to road transport operations. The Commission will provide the Member States with such a chart.

5. If the findings of a roadside check on the driver of a vehicle registered in another Member State provide grounds to believe that infringements have been committed which cannot be detected during the check due to lack of necessary data, the competent authorities of the Member States concerned shall assist each other to clarify the situation. In cases where, to this end, the competent Member State carries out a check at the premises of the undertaking, the results of this check shall be communicated to the other State concerned.

*Article 4***Checks at the premises of undertakings**

1. Checks at premises as provided for in Article 2 (1) shall be planned taking account of past experience of different categories of transport.

Checks shall also be carried out at premises of undertakings when serious breaches of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 have been detected at the roadside.

2. The elements of checks at the premises of undertakings, in addition to those for roadside checks, are:

- weekly rest periods and driving periods between these rest periods,
- two-weekly limitation of driving hours,
- compensation for reduced daily or weekly rest periods,
- the use of record sheets and/or the organization of drivers' working times.

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3. For the purposes of this Article, checks carried out at the premises of the competent authorities, on the basis of relevant documents and/or data handed over by undertakings at the request of the said authorities, shall have the same status as checks carried out at the premises of undertakings.

▼B*Article 5***Concerted and coordinated checks**

1. Member States shall, at least twice yearly, undertake concerted operations to check at the roadside drivers and vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

2. Such operations shall, wherever possible, be undertaken at the same time by the enforcement authorities of two or more Member States, each operating on their own territory.

*Article 6***Exchange of information**

1. Information made available bilaterally under Article 17 (3) of Regulation (EEC) No 3820/85 and Article 19 (3) of Regulation (EEC) No 3821/85 shall be exchanged every 12 months beginning six months after notification of this Directive⁽¹⁾ and also upon a specific request by a Member State in individual cases.

⁽¹⁾ This Directive was notified to the Member States on 24 November 1988.

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2. For this purpose, the competent authorities in each Member State shall use a standard reporting form drawn up by the Commission in agreement with the Member States.

Article 7

1. With the exception of the Portuguese Republic, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 January 1989 at the latest.

The Portuguese Republic shall bring the said laws, regulations and administrative provisions into force on 1 January 1990 at the latest.

2. Member States shall communicate to the Commission their laws, regulations and administrative provisions concerning the application of this Directive.

Article 8

This Directive is addressed to the Member States.