

Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (Text with EEA relevance)

Article 1

Subject-matter

This Directive lays down minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

Article 2

Checking systems

1 Member States shall organise a system of appropriate and regular checks on correct and consistent implementation, as referred to in Article 1, both at the roadside and at premises of undertakings of all transport categories.

These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

Member States shall ensure that a coherent national enforcement strategy is applied on their territory. For this purpose, Member States may designate a body for the coordination of actions taken under Articles 4 and 6, in which case the Commission and the other Member States shall be informed thereof.

2 In so far as this is not already the case, Member States shall, not later than 1 May 2007, provide authorised inspecting officers with appropriate legal powers to enable them correctly to discharge their inspection obligations as required by this Directive.

3 Each Member State shall organise checks in such a way that, as from 1 May 2006, 1 % of days worked by drivers of vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 are checked. This percentage will increase to at least 2 % from 1 January 2008 and to at least 3 % from 1 January 2010.

From 1 January 2012 this minimum percentage may be increased to 4 % by the Commission, in accordance with the procedure referred to in Article 12(2), provided that the statistics collected pursuant to Article 3 show that, on average, more than 90 % of all vehicles checked are equipped with a digital tachograph. In making its decision, the Commission shall also take into account the effectiveness of existing enforcement measures, in particular the availability of digital tachograph data at the premises of undertakings.

Not less than 15 % of the total number of the working days checked shall be checked at the roadside and not less than 30 % at the premises of undertakings. From 1 January 2008 not less than 30 % of the total number of the working days checked shall be checked at the roadside and not less than 50 % shall be checked at the premises of undertakings.

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4 The information submitted to the Commission in accordance with Article 16(2) of Regulation (EEC) No 3820/85 shall include the number of drivers checked at the roadside, the number of checks at the premises of undertakings, the number of working days checked and the number and type of infringements reported, together with a record of whether passengers or goods were transported.

Article 3

Statistics

Member States shall ensure that statistics collected from the checks organised in accordance with Article 2(1) and (3) are broken down into the following categories:

- (a) for roadside checks:
 - (i) type of road, namely whether it is a motorway, a national or a secondary road, and country of registration of the vehicle inspected, in order to avoid discrimination;
 - (ii) type of tachograph: analogue or digital;
- (b) for checks at the premises:
 - (i) type of transport activity, namely whether the activity is international or domestic, passenger or freight, own account or for hire or reward;
 - (ii) size of company fleet;
 - (iii) type of tachograph: analogue or digital.

These statistics shall be submitted biennially to the Commission and shall be published in a report.

The competent authorities in the Member States shall keep a record of the data collected for the previous year.

Undertakings responsible for drivers shall keep, for a period of one year, the documents, records of results and other relevant data passed to them by the enforcement authorities concerning checks carried out on them at their premises and/or on their drivers at the roadside.

Any further clarification required of the definitions of the categories mentioned under (a) and (b) shall be established by the Commission, in accordance with the procedure referred to in Article 12(2).

Article 4

Roadside checks

1 Roadside checks shall be organised in various places and at any time and shall cover a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.

2 Member States shall ensure that:

- a sufficient provision is made for checkpoints on or nearby existing and planned roads and, if necessary, that service stations and other safe locations along motorways can function as checkpoints;

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b checks are carried out following a random rotation system, with an appropriate geographical balance.

3 The points to be verified at roadside checks are set out in Part A of Annex I. Checks may focus on a specific point if the situation so requires.

4 Without prejudice to Article 9(2), roadside checks shall be carried out without discrimination. In particular, enforcement officers shall not discriminate on any of the following grounds:

- a country of registration of vehicle;
- b country of residence of driver;
- c country of establishment of undertaking;
- d origin and destination of journey;
- e type of tachograph: analogue or digital.

5 Enforcement officers shall be provided with:

- a a list of the principal points to be checked, as set out in Part A of Annex I;
- b standard checking equipment, as set out in Annex II.

6 If, in a Member State, the findings of a roadside check on the driver of a vehicle registered in another Member State afford grounds for believing that infringements have been committed which cannot be established during the check owing to a lack of necessary data, the competent authorities of the Member States concerned shall assist each other in clarifying the situation.

Article 5

Concerted checks

Member States shall, at least six times per year, undertake concerted roadside checks on drivers and vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85. Such checks shall be undertaken at the same time by the enforcement authorities of two or more Member States, each operating in its own territory.

Article 6

Checks at the premises of undertakings

1 Checks at premises shall be planned in the light of past experience in relation to the various types of transport and undertakings. They shall also be carried out if serious infringements of Regulations (EEC) No 3820/85 or (EEC) No 3821/85 have been detected at the roadside.

2 Checks at premises shall cover the points listed in Part A and Part B of Annex I.

3 Enforcement officers shall be provided with:

- a a list of the principal points to be checked, as set out in Parts A and B of Annex I;
- b standard checking equipment, as set out in Annex II.

4 Enforcement officers in a Member State shall, in the course of the check take into account any information provided by the designated liaison body of another Member State, as referred to in Article 7(1), concerning the activities of the undertaking in question in that other Member State.

5 For the purposes of paragraphs 1 to 4, checks carried out at the premises of the competent authorities, on the basis of relevant documents 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.

Article 7

Intracommunity liaison

- 1 Member States shall designate a body which shall have the following tasks:
- a to ensure coordination with equivalent bodies in the other Member States concerned as regards actions taken under Article 5;
 - b to forward the biennial statistical returns to the Commission under Article 16(2) of Regulation (EEC) No 3820/85;
 - c to be primarily responsible for assisting the competent authorities of other Member States pursuant to Article 4(6).

The body shall be represented on the Committee referred to in Article 12(1).

2 Member States shall notify the Commission of the designation of this body and the Commission shall advise the other Member States accordingly.

3 The exchange of data, of experience and of intelligence between Member States shall be actively promoted, primarily but not exclusively through the Committee referred to in Article 12(1) and any such body as the Commission may designate in accordance with the procedure referred to in Article 12(2).

Article 8

Exchange of information

1 Information made available bilaterally under Article 17(3) of Regulation (EEC) No 3820/85 or Article 19(3) of Regulation (EEC) No 3821/85 shall be exchanged between the designated bodies notified to the Commission in accordance with Article 7(2):

- a at least once every six months after the entry into force of this Directive;
- b upon specific request by a Member State in individual cases.

2 Member States shall seek to establish systems for the electronic exchange of information. In accordance with the procedure referred to in Article 12(2), the Commission shall define a common methodology for effective information exchange.

Article 9

Risk rating system

1 Member States shall introduce a risk rating system for undertakings based on the relative number and severity of any infringements of Regulations (EEC) No 3820/85 or (EEC) No 3821/85 that an individual undertaking has committed. The Commission shall support dialogue between Member States to encourage consistency between these risk rating systems.

2 Undertakings with a high risk rating shall be checked more closely and more often. The criteria and detailed rules for implementing such a system shall be discussed in the Committee

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referred to in Article 12, with a view to establishing a system for the exchange of information on best practices.

3 An initial list of infringements of Regulation (EEC) No 3820/85 and (EEC) No 3821/85 is set out in Annex III.

With a view to giving guidelines on the weighting of infringements of Regulations (EEC) No 3820/85 and (EEC) No 3821/85, the Commission may, as appropriate, in accordance with the procedure referred to in Article 12(2), adapt Annex III with a view to establishing guidelines on a common range of infringements, divided into categories according to their gravity.

The category for the most serious infringements should include those where failure to comply with the relevant provisions of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 create a serious risk of death or serious personal injury.

Article 10

Report

By 1 May 2009 the Commission shall submit to the European Parliament and to the Council a report analysing the penalties for serious infringements provided for in the legislation of the Member States.

Article 11

Best practice

1 In accordance with the procedure referred to in Article 12(2), the Commission shall establish guidelines on best enforcement practice.

Those guidelines shall be published in a biennial report of the Commission.

2 Member States shall establish joint training programmes on best practice to be held at least once per year and shall facilitate exchanges, at least once per year, of staff of their respective bodies for intracommunity liaison with their counterparts in other Member States.

3 An electronic and printable form shall be drawn up by the Commission in accordance with the procedure referred to in Article 12(2), to be used when a driver has been on sick leave or on annual leave, or when the driver has driven another vehicle exempted from the scope of Regulation (EEC) No 3820/85, during the period mentioned in the first indent of the first subparagraph of Article 15(7) of Regulation (EEC) No 3821/85.

4 Member States shall ensure that enforcement officers are well trained for the execution of their tasks.

Article 12

Committee procedure

1 The Commission shall be assisted by the Committee set up by Article 18(1) of Regulation (EEC) No 3821/85.

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2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3 The Committee shall adopt its Rules of Procedure.

Article 13

Implementing measures

At the request of a Member State or on its own initiative the Commission shall, in accordance with the procedure referred to in Article 12(2), adopt implementing measures in particular with one of the following aims:

- (a) to promote a common approach to the implementation of this Directive;
- (b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EEC) No 3820/85 between enforcement authorities;
- (c) to facilitate dialogue between the transport sector and enforcement authorities.

Article 14

Negotiations with third countries

Once this Directive has entered into force, the Community shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive.

Pending the conclusion of these negotiations, Member States shall include data on checks carried out on vehicles from third countries in their returns to the Commission as set out in Article 16(2) of Regulation (EEC) No 3820/85.

Article 15

Updating of the Annexes

Amendments to the Annexes which are necessary to adapt them to developments in best practice shall be adopted in accordance with the procedure referred to in Article 12(2).

Article 16

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2007. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.

Article 17

Repeal

1 Directive 88/599/EEC is hereby repealed.

2 References made to the repealed Directive shall be construed as being made to this Directive.

Article 18

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States.