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Contents

Page

I *Information*

Council

2005/C 63 E/01	Common Position (EC) No 11/2005 of 9 December 2004 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulation (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities ⁽¹⁾	1
2005/C 63 E/02	Common Position (EC) No 12/2005 of 9 December 2004 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to 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	11
2005/C 63 E/03	Common Position (EC) No 13/2005 of 9 December 2004 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels	26

EN

⁽¹⁾ Text with EEA relevance

I

(Information)

COUNCIL

COMMON POSITION (EC) No 11/2005

adopted by the Council on 9 December 2004

**with a view to adopting Directive 2005/.../EC of the European Parliament and of the Council of ...
on minimum conditions for the implementation of Council Regulation (EEC) Nos 3820/85 and
3821/85 concerning social legislation relating to road transport activities**

(Text with EEA relevance)

(2005/C 63 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Com-
munity, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and
Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽²⁾,

Whereas:

(1) Council Regulations (EEC) No 3820/85 of 20 December
1985 on the harmonisation of certain social legislation
relating to road transport ⁽³⁾ and (EEC) No 3821/85 of
20 December 1985 on recording equipment in road
transport ⁽⁴⁾ are important for the creation of a common
market for inland transport services, for road safety and
for working conditions.

(2) In its White Paper 'European transport policy for 2010:
time to decide', the Commission indicated the need to
tighten up checks and sanctions particularly for social
legislation on road transport activities, and specifically to
increase the number of checks, to encourage the
systematic exchange of information between Member
States, to coordinate inspection activities and to promote
the training of enforcement officers.

(3) It is therefore necessary to ensure proper application and
harmonised interpretation of the social rules on road
transport through the establishment of minimum
requirements for the uniform and effective checking by
the Member States of compliance with the relevant
provisions. Those checks should serve to reduce and
prevent infringements. Furthermore, a mechanism
should be introduced which ensures that undertakings
with a high risk rating should be checked more closely
and more often.

(4) The measures provided for in this Directive should not
only lead to greater road safety but should also contri-
bute to a harmonisation of working conditions in the
Community and promote a level playing field.

(5) The replacement of analogue tachographs by digital
tachographs will progressively enable a greater volume
of data to be checked more swiftly and more precisely
and, for that reason, Member States will be increasingly
able to undertake more checks. In terms of checks, the
percentage of days worked by drivers of vehicles falling
within the scope of the social legislation that are
checked should therefore be gradually increased to 4 %.

⁽¹⁾ OJ C 241, 28.9.2004, p. 65.

⁽²⁾ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E,
30.4.2004), Council Common Position of 9 December 2004 and
Position of the European Parliament of ... (not yet published in the
Official Journal).

⁽³⁾ OJ L 370, 31.12.1985, p. 1. Regulation as amended by Directive
2003/59/EC of the European Parliament and of the Council (OJ L
226, 10.9.2003, p. 4).

⁽⁴⁾ OJ L 370, 31.12.1985, p. 8. Regulation as last amended by
Commission Regulation (EC) No 432/2004 (OJ L 71, 10.3.2004, p.
3).

- (6) Sufficient standard equipment should be available to all enforcement units to enable them to carry out their duties effectively and efficiently.
- (7) Member States should seek to ensure, without prejudice to the proper execution of the tasks imposed by this Directive, that roadside checks are executed efficiently and quickly, with a view to completing the check in the shortest time possible and with the least delay for the driver.
- (8) Within each Member State there should be a single body for intracommunity liaison with other relevant competent authorities. That body should also compile relevant statistics. Member States should also apply a coherent national enforcement strategy on their territory and may designate a single body to coordinate its implementation.
- (9) Cooperation between Member State enforcement authorities should be further promoted through concerted checks, joint training initiatives, the electronic exchange of information, and the exchange of intelligence and experience.
- (10) Best practice in road transport enforcement operations, particularly to ensure a harmonised approach to the issue of proof of a driver's annual leave or sick leave, should be facilitated and promoted through a forum for Member State enforcement authorities.
- (11) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾.
- (12) Since the objective of this Directive, namely to lay down clear, common rules on minimum conditions for checking the correct and uniform implementation of Regulations (EEC) Nos 3820/85 and 3821/85, cannot be sufficiently achieved by the Member States and can, by reason of the need for coordinated transnational action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (13) Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85⁽²⁾ should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter

This Directive lays down minimum conditions for the implementation of Regulations (EEC) Nos 3820/85 and 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) Nos 3820/85 and 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. Each Member State shall organise checks in such a way that, as from ... (*), 1 % of days worked by drivers of vehicles falling within the scope of Regulations (EEC) Nos 3820/85 and 3821/85 are checked. This percentage will increase to 2 % from 1 January 2009 and to 3 % from 1 January 2011.

From 1 January 2013 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 25 % 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.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 325, 29.11.1988, p. 55. Directive as amended by Regulation (EC) No 2135/98 (OJ L 274, 9.10.1998, p. 1).

(*) Date of entry into force of this Directive.

3. 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 of infringements reported.

Article 3

Statistics

Member States shall ensure that statistics collected from the checks organised in accordance with Article 2(1) and (2) 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;
 - (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 annually to the Commission.

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

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;
 - (b) checks are carried out following a random rotation system.
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, enforce-

ment 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) whether vehicles are equipped with an analogue or digital tachograph.

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) certain 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 detected during the check owing to 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) Nos 3820/85 and 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 categories of transport. They shall also be carried out if serious infringements of Regulation (EEC) No 3820/85 or Regulation (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) certain 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 coordinating enforcement 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 date of 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 No 3821/85 that an individual undertaking has committed.

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

Article 10

Report

By...(*) 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 included in the biennial report referred to in Article 16(2) of Regulation (EEC) No 3820/85.

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.

(*) Three years of the entry into force of this Directive.

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 established by Article 18(1) of Regulation (EEC) No 3821/85.

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 for 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 industry 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.

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 January 2006. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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 with effect from ... (*).

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 twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Brussels, ...

For the European Parliament
The President

For the Council
The President

(*) Date of entry into force of this Directive.

ANNEX I

PART A

Roadside checks

The following points shall, in general, be covered by roadside checks:

- (1) daily driving periods, breaks and daily and weekly rest periods; 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 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 II to this Directive and/or on printouts;
- (2) 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 one 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 defined in Annex I to 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) ⁽¹⁾;
- (3) 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;
- (4) the 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.

PART B

Checks at the premises of undertakings

The following points shall be checked at the premises of undertakings, in addition to those checked at the roadside:

- (1) weekly rest periods and driving periods between these rest periods;
- (2) observance of the two-weekly limitation of driving hours;
- (3) record sheets, vehicle unit and driver card data and printouts.

Member States may, if appropriate, check on the joint liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with Regulations (EEC) Nos 3820/85 and 3821/85.

⁽¹⁾ OJ L 42, 23.2.1970, p. 1. Directive as last amended by Commission Directive 2004/78/EC (OJ L 153, 30.4.2004, p. 103).

*ANNEX II***STANDARD EQUIPMENT TO BE AVAILABLE TO ENFORCEMENT UNITS**

Member States shall ensure that the following standard equipment is available to enforcement units carrying out the duties set out in Annex I:

- (1) equipment capable of downloading data from the vehicle unit and driver card of the digital tachograph, reading data, and analysing data and/or transmitting findings to a central database for analysis;
 - (2) equipment to check the tachograph sheets.
-

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

- Having regard to Article 71 of the EC Treaty, and in the framework of the co-decision procedure in accordance with Article 251 of the EC treaty, the Council adopted its common position on a draft Directive of the European Parliament and of the Council on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities on 9 December 2004
- In taking its position, the Council took account of the opinion of the European Parliament in its first reading of 20 April 2004 ⁽¹⁾ and the opinion of the Economic and Social Committee delivered on 2 June 2004 ⁽²⁾.

Main aims of the draft Directive

The draft Directive aims

- to lay down minimum conditions for the implementation of Council Regulations 3820/85/EEC and 3821/85/EEC concerning social legislation relating to road transport activities ('driving and resting times of professional drivers'); thus to prescribe a minimum amount of such checks to be performed by enforcement authorities in each Member State;
- to provide a uniform interpretation of the nature of checks by ensuring a harmonised implementation of this Community road transport legislation.

The current legislation prescribes that a minimum overall percentage of 1 % of working days should be checked ⁽³⁾; the Commission now proposes to raise the standard to one that is both challenging and achievable, and will greatly improve road safety.

With the introduction of the digital tachograph data will be more easily accessible and more precise; this will enable the Member States to increase the number and effectiveness of checks both at the roadside and at premises of undertakings of all transport categories. Furthermore the draft Directive obliges the Member States to collect statistics on these checks and to submit them to the Commission annually.

Other new provisions contained the draft Directive are

- a detailed list of elements to be checked at the roadside and at premises,
- an increase in the amount of concerted checks between Member States,
- the introduction of an intra-community liaison body which will, among other tasks, ensure the coordination of concerted checks,
- a more frequent exchange of information pertaining to the results of checks, and the invitation to Member States to establish a system of electronic data exchange, and
- the introduction of risk rating systems for enterprises, combined with the obligation to check more closely and intensively those undertakings which have a high risk-rating.

The draft Directive also provides for the establishment of guidelines on best practices, joint training activities and the exchange of intelligence and experience.

⁽¹⁾ Document 8510/04 CODEC 567 TRANS 160 SOC 184.

⁽²⁾ OJ C 241 28.9. 2004, p. 65.

⁽³⁾ cf. 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 harmonisation of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport (OJ L 325, 29/11/1988, p. 55).

II. ANALYSIS OF THE COMMON POSITION

1. General

Council holds the view that its common position provides considerable added value in comparison to the legislation which is currently in force.

Taking into account the gradual renewal of the fleet of transport undertakings - and thus the gradual increase of the number of vehicles equipped with the digital tachograph - Member States will introduce a system of checks which ensures that by 2011 at least 3 % of days worked by drivers of vehicles, which fall under the scope of this draft Directive, are checked. Whereas the Commission foresaw an immediate increase in checks to 3 % of days worked as from the entry into force of the new Directive, Council decided to achieve this goal by gradually raising the number of checks from 1 % to 2 % as of 1 January 2009. Additionally, a provision was introduced to allow the increase of the minimum percentage to 4 % as of 1 January 2013, provided that statistics prove that more than 90 % of all vehicles checked are equipped with a digital tachograph.

In order to secure a good balance of checks at roadside and at premises of undertakings the common position contains a provision fixing the total number of working days checked at the roadside at 30 % (minimum) and the total number of working days checked at premises at 50 % (minimum) as of 1 January 2008.

Council rejected the inclusion of Directive 2002/15/EC, the 'Working Time Directive' into the scope of this draft Directive, as it wanted to focus on the enforcement of actual driving and resting times. Moreover, 'working time' can not be checked with any degree of certainty through the use of the digital tachograph and would therefore render roadside checks rather difficult.

2. Amendments of Parliament

— As regards the amendments of Parliament, the Council was able to accept amendment 27.

— Amendments 3 (*cf.* recital 4), 12, 21-22 (only the part concerning the 'type of tachograph') and 23 were partially accepted.

With regard to amendment 19, Council could accept Parliament's request to reduce the minimum number of working days checked at roadside down to 15 %. In this context it may be noted that Council fixed the number of days checked at premises at 25 % and introduced a transitional period (until 1 January 2008) for an increase to 30 % (roadside) and 50 % (premises of undertakings).

Council also considers the content of amendment 24 to be covered in Article 4.2(a). As for amendment 28, Council considered its main aim already to be covered in Articles 4.6 and 6.4. The principle underlying amendment 29 is already covered in Article 9 ('risk rating system') of the common position.

Concerning amendment 42 Council decided to include the term 'weekly rest period' into the list contained in Annex I A.

— Council rejected amendments 7, 63, 18, 20, 25, 31, 39, 40, 41 and 66 and also the amendments listed hereafter, together with additional comments:

— amendments 1, 12, 15, 29, 34 and 36, as they aimed at extending the scope of the draft Directive.

- Council also rejected the inclusion of a definition of 'driver' (amendments 13-14) and a provision concerning vehicles from third countries (amendment 16), because it considers this issue to be covered in the draft Regulation on driving and resting times ('Social harmonisation Regulation' ⁽¹⁾); furthermore, the relevant provisions referred to in amendments 32, 33, 35, 36, 37 and 38 were transferred to the draft Regulation on driving and resting times ('Social harmonisation Regulation') and therefore do not apply here anymore;
- amendment 5, since Council considers Article 11 to cover this concern sufficiently;
- amendment 6, since Council considers that this provision belongs in the proposed draft Regulation on driving and resting times;
- amendments 11, since it considers this request to be already implicit in the reference to the Regulation (EEC) 3820/85;
- amendment 26, because Council decided to leave this issue to the discretion of the enforcement officers;
- amendment 30, although it underlines that a less far-reaching provision is included in Article 13 (b).

III. CONCLUSION

The Council considers that, in the context of the most important 'core provisions' of the draft Directive - pertaining to the increase of the number of checks performed from 1 % to 3 % over the next 6 years and the fixation of minimum percentages of the total numbers of working days checked at roadside and at premises of undertakings - it appears that there is not a wide divergence of opinion between the European Parliament and Council. Most of the amendments which the Council rejected either are now covered in the draft Social Harmonisation Regulation or would have entailed a major extension of the scope of the draft Directive. Against this background, Council looks forward to reaching an agreement with Parliament on this draft Directive in the near future.

⁽¹⁾ cf. Common position adopted by the Council with a view to the adoption of 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) Nos 3821/85 and 2135/98.

COMMON POSITION (EC) No 12/2005**adopted by the Council on 9 December 2004****with a view to adopting Regulation (EC) No.../2005 of the European Parliament and of the Council of ... on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98**

(2005/C 63 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) In the field of road transport, Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport ⁽³⁾ sought to harmonise the conditions of competition between methods of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. Progress in these areas should be safeguarded and extended.
- (2) Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities ⁽⁴⁾ requires Member States to adopt measures which limit the maximum weekly working time of mobile workers.
- (3) Difficulties have been experienced in interpreting, applying, enforcing and monitoring certain provisions of Regulation (EEC) No 3820/85 relating to driving time, break and rest period rules for drivers engaged in national and international road transport within the Community in a uniform manner in all Member States, because of the broad terms in which they are drafted.

(4) Effective and uniform enforcement of those provisions is desirable if their objectives are to be achieved and the application of the rules is not to be brought into dispute. Therefore, a clearer and simpler set of rules is needed, which will be more easily understood, interpreted and applied by the road transport industry and the enforcement agencies.

(5) Measures provided for in this Regulation regarding working conditions should not prejudice the right of the two sides of industry to lay down, by collective bargaining or otherwise, provisions more favourable to workers.

(6) It is desirable to define clearly the scope of this Regulation by specifying the main categories of vehicle included.

(7) This Regulation should apply to carriage by road undertaken either exclusively within the Community or between the Community, Switzerland and the countries party to the European Economic Area agreement.

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

(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.

(10) 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.

⁽¹⁾ OJ C 221, 17.9.2002, p. 19.

⁽²⁾ Opinion of the European Parliament of 14 January 2003 (OJ C 38 E, 12.2.2004, p. 152), Council Common Position of 9 December 2004 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽³⁾ OJ J 370, 31.12.1985, p. 1. Regulation as amended by Directive 2003/59/EC of the European Parliament and of the Council (OJ L 226, 10.9.2003, p. 4).

⁽⁴⁾ OJ L 80, 23.3.2002, p. 35.

- (11) If an amendment to the internal Community rules in the field in question necessitates a corresponding amendment to the AETR, Member States should act together to bring about such an amendment to the AETR as soon as possible, in accordance with the procedure laid down therein.
- (12) The list of exemptions should be updated to reflect developments in the road transport sector over the past nineteen years.
- (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.
- (14) To guarantee effective enforcement, it is essential that the appropriate authorities, when carrying out roadside checks, and after a transitional period, should be able to ascertain that driving times and rest periods have been properly observed on the day of the check and the preceding 28 days.
- (15) The basic rules on driving time need to be clarified and simplified to allow effective and uniform enforcement by means of the digital tachograph as set out in Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport ⁽¹⁾ and this Regulation. In addition, through the standing committee, Member State enforcement authorities should strive to reach a common understanding of the implementation of this Regulation.
- (16) It has proved possible under the rules of Regulation (EEC) No 3820/85 to schedule daily driving periods and breaks to enable a driver to drive for too long without a full break, leading to reduced road safety and a deterioration in the driver's working conditions. It is therefore appropriate to ensure that split breaks are so ordered as to prevent abuse.
- (17) This Regulation aims to improve social conditions for employees which are covered by it, as well as to improve general road safety. It does so mainly by means of the provisions pertaining to maximum driving times per day, per week and per period of two consecutive weeks, the provision which obliges drivers to take a regular weekly rest period at least once per two consecutive weeks and the provisions which prescribe that under no circumstances should a daily rest period be less than an uninterrupted period of nine hours. Since those provisions guarantee adequate rest, and also taking into account experience with enforcement practices during the past years, a system of compensation for reduced daily rest periods is no longer necessary.
- (18) Many road transport operations within the Community involve transport by ferry or by rail for part of the journey. Clear, appropriate provisions regarding daily rest periods and breaks should therefore be laid down for such operations.
- (19) In view of the increase in the cross-border carriage of goods and passengers, it is desirable, in the interests of road safety and enhanced enforcement, for roadside checks and checks at the premises of undertakings to cover driving times, rest periods and breaks undertaken within other Member States or third countries and determine whether the relevant rules have been fully and properly observed.
- (20) Liability of transport undertakings should apply at least to transport undertakings that are legal or natural persons, and should not exclude proceedings against natural persons who are perpetrators, or instigators of, or accessories to, infringements of this Regulation.
- (21) It is necessary for drivers working for several transport undertakings to supply each of them with adequate information to enable it to fulfil its responsibilities under this Regulation.
- (22) In order to promote social progress and improve road safety, each Member State should retain the right to adopt certain appropriate measures.
- (23) National derogations should reflect changes in the road transport sector and be restricted to those elements not now subject to competitive pressures.
- (24) The Member States should lay down rules for vehicles used for the carriage of passengers on regular services where the route covered does not exceed 50 km. Those rules should provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods.

⁽¹⁾ OJ L 370, 31.12.1985, p. 8. Regulation last amended by Commission Regulation (EC) No 432/2004 (OJ L 71, 10.3.2004, p. 3).

(25) It is desirable, in the interests of effective enforcement, that all regular national and international passenger transport services should be checked using the standard recording device.

(26) The Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate, dissuasive and non-discriminatory. The possibility of immobilising the vehicle where serious infringements are detected should be also included within the common range of measures open to Member States. The provisions contained in this Regulation pertaining to penalties or proceedings should not affect the national rules concerning the burden of proof.

(27) It is desirable in the interests of clear and effective enforcement to ensure uniform provisions on the liability of transport undertakings and drivers for infringements of this Regulation. This liability may result in penal, civil or administrative penalties as may be the case in the Member States.

(28) Since the objective of this Regulation, namely the establishment of clear, common rules on driving times, breaks and rest periods cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for coordinated action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(29) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

(30) Regulation (EEC) No 3821/85 should be amended to clarify specific obligations on transport undertakings and drivers as well as to promote legal certainty and to facilitate enforcement of driving time and rest period limits during roadside checks.

(31) Regulation (EEC) No 3821/85 should also be amended to ensure legal certainty as regards the new dates for the introduction of the digital tachograph and for the availability of driver cards.

(32) For reasons of clarity and rationalisation, Regulation (EEC) No 3820/85 should be repealed and replaced by this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

Introductory provisions

Article 1

This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This Regulation also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.

Article 2

1. This Regulation shall apply to the carriage by road:

- (a) of goods where the permissible maximum weight of the vehicle, including any trailer, or semi-trailer, exceeds 3,5 tonnes, or
- (b) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.

2. This Regulation shall apply, irrespective of the country of registration of the vehicle, to carriage by road undertaken:

- (a) exclusively within the Community; and
- (b) between the Community, Switzerland and the countries party to the European Economic Area agreement.

3. The European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport ('AETR') shall apply, instead of this Regulation, to international road transport operations undertaken in part outside the areas mentioned in paragraph 2, to:

- (a) vehicles registered in the Community or in countries which are contracting parties to the AETR agreement, for the whole journey;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- (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.

Article 3

This Regulation shall not apply to carriage by road by:

- (a) vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;
- (b) vehicles with a maximum authorised speed not exceeding 30 kilometres per hour;
- (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;
- (d) vehicles used in emergencies or rescue operations;
- (e) specialised vehicles used for medical purposes;
- (f) specialised breakdown vehicles operating within a 100 km radius of their base;
- (g) vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;
- (h) vehicles or combinations of vehicles with a maximum permissible weight not exceeding 7,5 tonnes used for the non-commercial carriage of goods;
- (i) commercial vehicles, which have a historic status according to the legislation of the Member State in which they are being driven and which are used for the non-commercial carriage of passengers or goods.

Article 4

For the purposes of this Regulation the following definitions shall apply:

- (a) 'carriage by road' means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods;
- (b) 'vehicle' means a motor vehicle, tractor, trailer or semi-trailer or a combination of these vehicles, defined as follows:
 - 'motor vehicle': any self-propelled vehicle circulating on the road, other than a vehicle permanently running

on rails, and normally used for carrying passengers or goods;

- 'tractor': any self-propelled vehicle circulating on the road, other than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines;
- 'trailer': any vehicle designed to be coupled to a motor vehicle or tractor;
- '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;
- (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;
- (d) 'break' means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation;
- (e) 'other work' means all activities which are defined as working time in Article 3(a) of Directive 2002/15/EC except 'driving', and also any work for the same or another employer, within or outside of the transport sector;
- (f) 'rest' means any uninterrupted period during which the driver may freely dispose of his time;
- (g) 'daily rest period' means the daily period during which the driver may freely dispose of his time and covers a 'regular daily rest period' or a 'reduced daily rest period':
 - '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;
 - 'reduced daily rest period' means any uninterrupted period of rest of at least 9 hours but less than 11 hours;
- (h) 'weekly rest period' means an uninterrupted period of rest during which the driver may freely dispose of his time and covers a 'regular weekly rest period' or a 'reduced weekly rest period':
 - 'regular weekly rest period' means any uninterrupted period of rest of at least 45 hours;

— '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;

(i) 'a week' means the period of time between 00.00 on Monday and 24.00 on Sunday;

(j) 'daily driving time' means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period;

(k) 'weekly driving time' means the total accumulated driving time during a week;

(l) 'permissible maximum weight' means the maximum authorised operating weight of the vehicle fully laden;

(m) 'regular passenger services' means national and international services as defined in Article 2 of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus ⁽¹⁾;

(n) 'multi-manning' means a situation in which a driver is engaged in multi-manning a vehicle if there is, during periods of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, at least one other driver on the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;

(o) 'transport undertaking' means any natural person, any legal person, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such a personality, which engages in carriage by road, whether for hire and reward or for own account;

(p) 'driving period' means the accumulated driving time from when a driver commences driving following a rest period or a regulated break until he takes a rest period or a regulated break. The driving period may be continuous or broken;

(q) 'regulated break' shall mean an uninterrupted break, subject to a minimum of fifteen minutes, of not less than five minutes per half-hour, or part thereof, of accumulated driving time at the time when the regulated break starts.

CHAPTER II

Crews, driving times, breaks and rest periods

Article 5

1. The minimum age for conductors shall be 18 years.
2. The minimum age for drivers' mates shall be 18 years. However, Member States may reduce the minimum age for drivers' mates to 16 years, provided that:
 - (a) the carriage by road is carried out within one Member State within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centre of which is situated within that radius;
 - (b) the reduction is for the purposes of vocational training; and
 - (c) there is compliance with the limits imposed by the Member State's national rules on employment matters.

Article 6

1. The daily driving time shall not exceed 9 hours.

However, the daily driving time may be extended to at most 10 hours not more than twice during the week.

2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time as laid down in Directive 2002/15/EC being exceeded.
3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.
4. Daily and weekly driving times shall include all driving time on the territory of the Community or of a third country.

5. A driver shall record as 'other work' any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of 'availability', as defined in Article 15(3)(c) of Regulation (EEC) No 3821/85, since his last daily or weekly rest period. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.

⁽¹⁾ OJ L 74, 20.3.1992, p. 1. Regulation as last amended by the 2003 Act of Accession.

Article 7

After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than forty-five minutes, unless he takes a rest period.

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

Driving period	Minimum regulated break
0 - 90 minutes	15 minutes
91 - 120 minutes	20 minutes
121 - 150 minutes	25 minutes
151 - 180 minutes	30 minutes
181 - 210 minutes	35 minutes
211 - 240 minutes	40 minutes
241 - 270 minutes (maximum)	45 minutes

Article 8

1. A driver shall take daily and weekly rest periods.
 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.
3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.
 4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.
 5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least 9 hours.

6. In any two consecutive weeks a driver shall take at least:

— two regular weekly rest periods, or

— one regular weekly rest period and one reduced weekly rest period of at least 24 hours. However, the reduction shall be compensated by an equivalent rest taken en bloc before the end of the third week following the week in question.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.

7. Any rest taken as compensation for a reduced weekly rest period shall be attached to another rest period of at least nine hours.

8. Daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

9. A weekly rest period that falls in two weeks may be counted in either week, but not in both.

Article 9

1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total.

2. During the regular daily rest period mentioned in paragraph 1 the driver shall have access to a bunk or couchette.

CHAPTER III

Liability of the undertakings*Article 10*

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.

2. A transport undertaking shall organise the work of drivers referred to in paragraph 1 in such a way that the drivers are able to comply with Regulation (EEC) No 3821/85 and Chapter II of this Regulation. The transport undertaking shall properly instruct the driver and shall make regular checks to ensure that Regulation (EEC) No 3821/85 and Chapter II of this Regulation are complied with.

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.

Without prejudice to the right of Member States to hold transport undertakings fully liable, Member States may make this liability conditional on the undertaking's infringement of paragraphs 1 and 2. Member States may consider any evidence that the transport undertaking cannot reasonably be held responsible for the infringement committed.

4. Undertakings, consignors, freight forwarders, tour operators, prime contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation.

5. (a) A transport undertaking which uses vehicles that are fitted with recording equipment complying with Annex IB of Regulation (EEC) No 3821/85 and that fall within the scope of this Regulation, shall:

(i) ensure that all data are downloaded from the vehicle unit and driver card as regularly as is stipulated by the Member State and that relevant data are downloaded more frequently so as to ensure that all data concerning activities undertaken by or for that undertaking are downloaded;

(ii) ensure that all data downloaded from both the vehicle unit and driver card are kept for at least twelve months following recording and, should an inspecting officer request it, such data are accessible, either directly or remotely, from the premises of the undertaking;

(b) For the purposes of this paragraph 'downloaded' shall be interpreted in accordance with the definition laid down in Annex IB, Chapter I, point (5) of Council Regulation (EEC) No 3821/85;

(c) The maximum period within which the relevant data shall be downloaded under (a)(i) shall be decided by the Commission in accordance with the procedure referred to in Article 24(2).

CHAPTER IV

Exceptions

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.

Article 12

Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 6 to 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place.

Article 13

1. Provided the objectives set out in Article 1 are not prejudiced, each Member State may grant exceptions from Articles 5 to 9 on its own territory or, with the agreement of the States concerned, on the territory of another Member State, applicable to carriage by the following:

(a) vehicles owned or hired without a driver by public authorities to undertake carriage by road which do not compete with private transport undertakings;

(b) vehicles used or hired without a driver by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking;

(c) agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle;

(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⁽¹⁾ 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 kilometre radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity;

⁽¹⁾ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (e) 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;
- (f) vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible weight of which, including the weight of a trailer or semi-trailer, does not exceed 7,5 tonnes;
- (g) vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers;
- (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;
- (i) vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers;
- (j) specialised vehicles transporting circus and fun-fair equipment;
- (k) specially fitted mobile project vehicles, the primary purpose of which is use as an educational facility when stationary;
- (l) vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed;
- (m) specialised vehicles transporting money and/or valuables;
- (n) vehicles used for carrying animal waste or carcasses which are not intended for human consumption;
- (o) vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals.

2. Member States shall inform the Commission of the exceptions granted under paragraph 1 and the Commission shall inform the other Member States thereof.

3. Provided that the objectives set out in Article 1 are not prejudiced and adequate protection for drivers is provided, a Member State may, after approval by the Commission, grant on its own territory minor exemptions from this Regulation for vehicles used in predefined areas with a population density of less than 5 persons per square kilometre, in the following cases:

- regular domestic passenger services, where their schedule is confirmed by the authorities (in which case only exemptions relating to breaks may be permitted) and
- domestic road haulage operations for own account or for hire or reward, which have no impact on the single market and are needed to maintain certain sectors of industry in the territory concerned and where the exempting provisions of this Regulation impose a limiting radius of up to 100 km.

Carriage by road under this exemption may include a journey to an area with a population density of 5 persons or more per square kilometre only in order to end or start the journey. Any such measures shall be proportionate in nature and scope.

Article 14

1. Provided that the objectives set out in Article 1 are not prejudiced, Member States may, after authorisation by the Commission, grant exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances.

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

3. The Commission shall inform the other Member States of any exception granted pursuant to this Article.

Article 15

Member States shall ensure that drivers of vehicles referred to in Article 3(a) are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods.

CHAPTER V

Control procedures and sanctions

Article 16

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:

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

2. A service timetable and a duty roster shall be drawn up by the transport undertaking and shall show, in respect of each driver, the name, place where he is based and the schedule laid down in advance for various periods of driving, other work, breaks and availability.

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.

3. The duty roster shall:

- (a) include all the particulars specified in paragraph 2 for a minimum period covering the previous 28 days; these particulars must be updated on regular intervals, the duration of which may not exceed one month;
- (b) be signed by the head of the transport undertaking or by a person authorised to represent him;
- (c) be kept by the transport undertaking for one year after expiry of the period covered by it. The transport undertaking shall give an extract from the roster to the drivers concerned upon request; and
- (d) be produced and handed over at the request of an authorised inspecting officer.

Article 17

1. Member States, using the standard form set out in Decision 93/173/EEC ⁽¹⁾, shall communicate the necessary information to the Commission to enable it to draw up every two years a report on the application of this Regulation and Regulation (EEC) No 3821/85 and developments in the fields in question.

2. This information shall be communicated to the Commission not later than 30 September of the year following the end of the two-year period concerned.

3. The Commission shall forward the report to the European Parliament and to the Council within 13 months of the end of the two-year period concerned.

Article 18

Member States shall adopt such measures as may be necessary for the implementation of this Regulation.

Article 19

1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EEC)

⁽¹⁾ OJ L 72, 25.3.1993, p. 33.

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.

2. A Member State shall enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.

By way of exception, where an infringement is detected:

- which was not committed on the territory of the Member State concerned, and
- which has been committed by an undertaking which is established in, or a driver whose place of employment is, in another Member State or a third country,

a Member State may, until 1 January 2009, instead of imposing a penalty, notify the facts of the infringement to the competent authority in the Member State or the third country where the undertaking is established or where the driver has his place of employment.

3. Whenever a Member State initiates proceedings or imposes a penalty for a particular infringement, it shall provide the driver with due evidence of this in writing.

4. Member States shall ensure that a system of proportionate penalties, which may include financial penalties, is in force for infringements of this Regulation or Regulation (EEC) No 3821/85 on the part of undertakings, or associated consignors, freight forwarders, tour operators, prime contractors, sub-contractors and driver employment agencies.

Article 20

1. The driver shall keep any evidence provided by a Member State concerning penalties imposed or the initiation of proceedings until such time as the same infringement of this Regulation can no longer lead to a second proceeding or penalty pursuant to this Regulation.

2. The driver shall produce the evidence referred to in paragraph 1 upon request.

3. A driver who is employed or at the disposal of more than one transport undertaking shall provide sufficient information to each undertaking to enable it to comply with Chapter II.

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 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.

Article 22

1. Member States shall assist each other in applying this Regulation and in checking compliance herewith.

2. The competent authorities of the Member States shall regularly exchange all available information concerning:

- (a) infringements of the rules set out in Chapter II committed by non-residents and any penalties imposed for such infringements;
- (b) penalties imposed by a Member State on its residents for such infringements committed in other Member States.

3. The Member States shall regularly send relevant information concerning the national interpretation and application of this Regulation to the Commission, which will make this information available in electronic form to other Member States.

Article 23

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

Article 24

1. The Commission shall be assisted by the committee referred to in Article 18(1) of Regulation (EEC) No 3821/85.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

Article 25

1. At the request of a Member State, or on its own initiative, the Commission shall:

- (a) examine cases where differences in the application and enforcement of any of the provisions of this Regulation arise and particularly concerning driving times, breaks and rest periods;
- (b) clarify the provisions of this Regulation, with a view to promoting a common approach.

2. In the cases referred to in paragraph 1 the Commission shall take a decision on a recommended approach in accordance with the procedure referred to in Article 24(2). The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

CHAPTER VI

Final provisions

Article 26

Regulation (EEC) No 3821/85 is hereby amended as follows:

1. Article 2 shall be replaced by the following:

'Article 2

For the purpose of this Regulation the definitions set out in Article 4 of Regulation (EC) No... of the European Parliament and of the Council of... on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 (*) shall apply.

(*) OJ L ...;

2. Article 3(1), (2) and (3) shall be replaced as follows:

'1. Recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Articles 3 and 16(1) of Regulation (EC) No... (*) and vehicles, which were exempted from the scope of application of Regulation (EEC) No 3820/85, but which are no longer exempted under Regulation (EC) No... (*) shall have until 31 December 2007 to comply with this requirement.

2. Member States may exempt vehicles mentioned in Articles 13(1) and (3) of Regulation (EEC) No.... (*) from application of this Regulation.

(*) This Regulation.

3. Member States may, after authorisation by the Commission, exempt from application of this Regulation vehicles used for the transport operations referred to in Article 14 of Regulation (EEC) No... (*).;

3. Article 14(2) shall be replaced as follows:

‘2. The undertaking shall keep record sheets and printouts, whenever printouts have been made to comply with Article 15(1), in chronological order and in a legible form for at least a year after their use and shall give copies to the drivers concerned who request them. The undertaking shall also give copies of downloaded data from the driver cards to the drivers concerned who request them and the printed papers of these copies. The record sheets, printouts and downloaded data's shall be produced or handed over at the request of any authorised inspecting officer.’;

4. Article 15 shall be amended as follows:

— In paragraph 1, the following subparagraph shall be added:

‘Where a driver card is damaged, malfunctions or is not in the possession of the driver, the driver shall:

(i) at the start of his journey, print out the details of the vehicle the driver is driving, and shall enter onto that printout:

(a) details that enable the driver to be identified (name, driver card or driver's licence number), including his signature;

(b) the periods referred to in paragraph 3, second indent (b), (c) and (d).

(ii) at the end of his journey, print out the information relating to periods of time recorded by the recording equipment, record any periods of other work, availability and rest undertaken since the printout that was made at the start of the journey, where not recorded by the tachograph, and mark on that document details that enable the driver to be identified (name, driver card or driver's licence number), including the driver's signature.’;

— Paragraph 2, second subparagraph shall be replaced by the following:

‘When as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the periods of time referred to in paragraph 3, second indent (b), (c) and (d) shall:

(i) if the vehicle is fitted with recording equipment in conformity with Annex I, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet; or

(ii) if the vehicle is fitted with recording equipment in conformity with Annex IB, be entered onto the driver card using the manual entry facility provided in the recording equipment.

Where there is more than one driver on board the vehicle fitted with recording equipment in conformity with Annex IB, they shall ensure that their driver cards are inserted into the correct slot in the tachograph.’;

— Paragraph 3(b) and (c) shall be replaced by the following:

‘(b) “other work” means any activity other than driving, as defined in Article 3(a) of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (*), and also any work for the same or another employer within or outside of the transport sector, and must be recorded under this sign #.

(c) “availability” defined in Article 3(b) of Directive 2002/15/EC must be recorded under this sign #.

(*) OJ L 80, 23.3.2002, p. 35.’

— Paragraph 4 shall be deleted;

— Paragraph 7 shall be replaced by the following:

‘7 (a) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex I, the driver must be able to produce, whenever an inspecting officer so requests:

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

(ii) the driver card if he holds one, and

(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 ... (*).

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

(*) This Regulation.

(b) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex IB, the driver must be able to produce, whenever an inspecting officer so requests:

- (i) the driver card of which he is holder;
- (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
- (iii) the record sheets corresponding to the same period as the one referred to in the previous subparagraph during which he drove a vehicle fitted with recording equipment in conformity with Annex I.

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

(c) An authorised inspecting officer may check compliance with Regulation (EEC) No ... (*) by analysis of the record sheets, of the displayed or printed data which have been recorded by the recording equipment or by the driver card or, failing this, by analysis of any other supporting document that justifies non-compliance with a provision, such as those laid down in Article 16(2) and (3).'

Article 27

Regulation (EC) No 2135/98 is hereby amended as follows:

1. Article 2(1)(a) shall be replaced by the following:

- '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'.

2. Article 2(2) shall be replaced by the following:

- '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.'

Article 28

Regulation (EEC) No 3820/85 is hereby repealed.

Notwithstanding, paragraphs 1, 2 and 4 of Article 5 shall continue to apply until the dates set out in Article 15(1) of 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 (*).

Article 29

This Regulation shall enter into force one year after the day of its publication in the *Official Journal of the European Union*, with the exception of Article 27, which shall enter into force as from the twentieth day following the day of publication.

It shall apply from ... (¹).

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

Done at Brussels, ...

For the European Parliament
The President

For the Council
The President

(*) This Regulation.

(*) This Regulation.

(¹) OJ L 226, 10.9.2003, p. 4. Directive as amended by Council Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

Procedure

In the framework of the codecision procedure (Article 251 EC Treaty), the European Parliament adopted its opinion on 14 January 2003 ⁽¹⁾ on the Commission proposal, as submitted on 12 October 2001. Thereafter, the Commission presented an amended proposal on 12 August 2003.

As compared to the original proposal, the amended proposal has incorporated a considerable number of the amendments adopted by the European Parliament, and has also taken into account work which was already performed previously by the Council instances.

The draft Regulation seeks to replace the legislation currently in force, namely Regulation (EEC) 3820/85 on the harmonisation of certain social legislation relating to road transport ⁽²⁾. This latter Regulation has so far governed driving and resting times and breaks for professional drivers. Furthermore, the draft Regulation proposes to amend Regulation (EEC) 3821/85, catering in particular for technical aspects relating to the introduction of the digital tachograph. It also provides for the postponement of the deadlines for the introduction of this new device and for the availability of driver cards.

The Council adopted its common position on 9 December 2004. In carrying out its work, the Council also took account of the opinion of the Economic and Social Committee ⁽³⁾.

Main aims of the draft Regulation

The draft Regulation aims to:

- adapt the mechanism of driving times, breaks and rest periods in order to improve working conditions for the professional drivers in the transport sector, whilst also taking into account insights gained in terms of the interrelationship between road safety and driving times of professional drivers;
- ensure that the introduction of the digital tachograph allows a much more effective enforcement of the rules in question. The postponement of the deadline for its mandatory fitting takes account of the capabilities of the industry in supplying the new device.

This draft legislation makes a significant contribution to enhancing road safety; in fact, its adoption constitutes a significant step forward in the attainment of the EU's objective of halving road accident fatalities by 2010.

II. ANALYSIS OF THE COMMON POSITION

The Commission submitted its initial proposal on 12 October 2001 as a response to the widely perceived and urgent need to clarify, simplify and update the provisions of Regulation (EEC) N°3820/85. In examining this proposal, the Council, from the outset of proceedings, was confronted with the challenge of striking a balance between concerns pertaining to road safety, social considerations and industry flexibility. This was not an easy task, entailing protracted discussions within the Council instances. The eventual agreement within the Council, as reflected in its common position, was facilitated through the submission of the Commission's amended proposal on 12 August 2003.

⁽¹⁾ OJ C 38 E, 12.2.2004, p. 152.

⁽²⁾ OJ L 370, 31.12.1985, p. 1.

⁽³⁾ OJ C 221, 17.9.2002, p. 19.

Council holds the view that its common position provides a considerable added value as compared to the legislation currently in force. Among the elements which provide such added value are the following:

- 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 (currently it is possible to drive up to 74 hours in one calendar week);
- during two consecutive weeks, a driver must take at least one regular weekly rest period consisting of an uninterrupted period of at least 45 hours;
- the legal framework is created for Member States, subject to certain conditions:
 - = to immobilise temporarily a vehicle;
 - = to withdraw, suspend or restrict an undertaking's licence;
 - = to withdraw, suspend or restrict a driver's driving licence.

Guidelines with a view to promoting a harmonised application of these provisions will be developed in accordance with the Comitology procedure;

- the time period which can effectively be checked by enforcement officers is increased significantly, from 'the current week and the last driving day of the previous week' to 'the current week and the previous 15 days'. After 1 January 2008 this period is increased even further, to 'the current day and the previous 28 days'. These provisions enable enforcers to benefit from the capabilities of the digital tachograph;
- the number and scope of the general exemptions is reduced;
- competent authorities in the Member States will be empowered to impose a sanction for an infringement detected on its territory, even when the infringement has been committed outside its territory;
- other actors in the transport chain can, under certain conditions, be held co-liaible for infringements.

Council also recalls that, as concerns the introduction of the digital tachograph (*i.e.* the fitting of this equipment to all new heavy goods vehicles), it has extended the deadline for this by 1 year, to 5 August 2005 (*cf.* Article 27) due to practical considerations. Furthermore, the Council common position, through the amendment of the relevant instrument (Regulation (EEC) N^o 3821/85), provides for a number of improvements when it comes to operating this device.

Amendments of the European Parliament

Council was able to accept a considerable number of Parliament's amendments in full, namely amendments 1, 2, 7, 21, 25, 26, 27, 30, 32, 33, 37, 41, 44, 47, 52, 53. Furthermore, Council accepted, albeit with a different wording, amendments 3 (in recital 11), 5, 6, 31, 34, 43, 48, 54, 62 (in Article 25(iii)), 65 and 66.

Council was able to accept partially amendments 4, 12, 17, 18, 107 (as a compromise, Council adopted a provision stating that only *reduced* weekly rest periods may be taken in a vehicle) and 45 (Council considers the provisions contained in Article 8.6 and 8.7 to be roughly equivalent).

As regards amendment 39, Council adopted a different solution to this problem; this is reflected in Article 6.5.

Of the amendments which were not incorporated by the Commission in its amended proposal, Council accepted nevertheless amendments 20 and 58.

Council rejected amendments 8, 11, 14, 89, 19, 22, 28, 78, 42, 51, 55, 56, 61, 67, 69 and 70. Council furthermore rejected the list of amendments which is reflected hereafter, together with explanatory comments:

- amendment 49; it should be noted that Council's provisions regarding this particular issue consist of the provisions of Article 5(a)ii and Article 19bis - this latter Article notably takes on board the notion introduced by Parliament regarding the situation in which a driver works for more than one transport undertaking;
- amendment 9 - although Council agrees that enforcers should be *able* to check the current day and the preceding 28 days, it felt that no absolute obligation should be put on enforcers to do so, leaving it to them to make their own judgement;
- as regards amendment 10, Council holds the opinion that this Regulation should focus on driving and resting times and not on working time as a whole;
- regarding amendment 13, it should be underlined that Council included a somewhat similar provision in Article 6.2;
- concerning amendments 15 and 16 which concern the AETR, and which are linked to amendment 4, Council holds the view that its solution for this problem ensures an equivalent safeguard;
- as regards amendments 23 and 24 which deal with exemptions for certain categories of vehicles, Council included these categories in Article 13, so that Member States may exempt these categories on their national territory;
- as regards amendment 29, Council holds the view that a definition of 'driving time' is not necessary;
- amendment 35: Council is of the opinion that these minimum ages should be addressed in the relevant Community legislation pertaining to driving licences and to the training of professional drivers;
- as regards amendment 83, Council proposes in Article 7 a similar system which addresses the same traffic safety issue but which, it feels, is more easily applied and checked;
- amendment 57 - Council underlines however that two elements of this amendment are included in Article 13(k) and (m) of the common position;
- concerning amendment 59, Council points out that to some extent, Article 13(b) caters for this particular situation;
- amendments 60 and 63 - Council considers that such provisions belong in the proposed draft Directive on enforcement ⁽¹⁾ which is closely linked to this draft Regulation;
- as regards amendment 64, Council notes that it did accept the reference to 'non-discrimination';
- amendment 68 - since Council considers that the current provisions contained in Article 20, 21, 23 and 24 suffice.

III. CONCLUSION

The Council could accept most of Parliament's amendments (*cf.* also the list of 'added value' elements under II) when it comes to the 'core provisions' of the draft Regulation - pertaining to daily or weekly driving and resting times and to breaks, but also to issues of scope and enforcement. Hence, it can be concluded that there exists a large degree of convergence between the two Institutions on the key elements of this draft instrument.

⁽¹⁾ 'Draft Directive of the European Parliament and of the Council on minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations (EEC) 3820/85 and 3821/85 concerning social legislation relating to road transport activities.'

COMMON POSITION (EC) No 13/2005**adopted by the Council on 9 December 2004****with a view to adopting Directive 2005/.../EC of the European Parliament and of the Council of ...
amending Directive 1999/32/EC as regards sulphur content of marine fuels**

(2005/C 63 E/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The Community's environmental policy, as set out in the action programmes on the environment and, in particular, in the Sixth Community Environmental Action Programme adopted by Decision No 1600/2002/EC ⁽⁴⁾, on the basis of Article 174 of the Treaty, aims to achieve levels of air quality that do not give rise to unacceptable impacts on, and risks to, human health and the environment.
- (2) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels ⁽⁵⁾ lays down the maximum permitted sulphur content of heavy fuel oil, gas oil and marine gas oil used in the Community.
- (3) Directive 1999/32/EC requires the Commission to consider what measures could be taken to reduce the contribution to acidification of the combustion of marine fuels other than marine gas oils and, if appropriate, make a proposal.

- (4) Emissions from shipping due to the combustion of marine fuels with high sulphur content contribute to air pollution in the form of sulphur dioxide and particulate matter. This damages the environment through acidification and harms human health, property and cultural heritage, particularly around coastal areas and in ports.
- (5) The measures in this Directive reducing emissions from shipping in international waters complement Member States' national measures to comply with emissions ceilings for atmospheric pollutants set out in Directive 2001/81/EC ⁽⁶⁾.
- (6) Reducing the sulphur content of fuels has certain advantages for ships, in terms of operating efficiency and maintenance costs, and facilitates the effective use of certain emission abatement technologies such as selective catalytic reduction.
- (7) The Treaty requires that consideration be given to the special characteristics of the outermost regions of the Community, namely the French overseas departments, the Azores, Madeira and the Canary Islands.
- (8) In 1997, a diplomatic conference adopted a Protocol to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (hereinafter 'MARPOL'). This Protocol adds a new Annex VI to MARPOL, containing regulations for the prevention of air pollution from ships. The 1997 Protocol, and consequently Annex VI to MARPOL, will enter into force on 19 May 2005.
- (9) Annex VI to MARPOL makes provision for certain areas to be designated as Sulphur Oxide Emission Control Areas (hereinafter 'SOx Emission Control Areas'). It already designates the Baltic Sea as such an area. Discussions within the International Maritime Organisation (IMO) have resulted in agreement on the principle of the designation of the North Sea, including the English Channel, as a SOx Emission Control Area following the entry into force of Annex VI.

⁽¹⁾ OJ C 45 E, 25.2.2003, p. 277.

⁽²⁾ OJ C 208, 3.9.2003, p. 27.

⁽³⁾ Opinion of the European Parliament of 4 June 2003 (OJ C 68 E, 18.3.2004, p. 311), Council Common Position of 9 December 2004 and Position of the European Parliament of (not yet published in the Official Journal).

⁽⁴⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁵⁾ OJ L 121, 11.5.1999, p. 13. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽⁶⁾ OJ L 309, 27.11.2001, p. 22. Directive as amended by the 2003 Act of Accession.

- (10) Enforcement of the obligations with regard to the sulphur content of marine fuels is necessary to achieve the aims of this Directive. Effective sampling and dissuasive penalties throughout the Community are necessary to ensure credible implementation of this Directive. Member States should take enforcement action with respect to vessels flying their flag and vessels while in their ports. It is also appropriate for Member States to cooperate closely to take additional enforcement action with respect to other vessels in accordance with international maritime law.
- (11) To allow sufficient time for the maritime industry to enable technical adaptation to a maximum limit of 0,1 % sulphur by weight for marine fuels used by inland waterway vessels and ships at berth in Community ports, the date of application of this requirement should be 1 January 2010. Since this deadline might present technical problems to Greece, a temporary derogation is appropriate for some specific vessels operating within the territory of Greece.
- (12) It is essential to reinforce Member States' positions in IMO negotiations, in particular to promote, in the revision phase of Annex VI to MARPOL, the consideration of more ambitious measures as regards tighter sulphur limits for heavy fuel oils used by ships and the use of equivalent alternative emission abatement measures.
- (13) In its resolution A.926(22), the IMO Assembly invited Governments, particularly those in regions where SOx Emission Control Areas have been designated, to ensure the availability of low sulphur bunker fuel oil in areas within their jurisdiction.
- (14) The IMO has adopted guidelines for the sampling of fuel oil for determining compliance with Annex VI to MARPOL, and is due to develop guidelines on exhaust gas cleaning systems and other technological methods to limit SOx emissions in SOx Emission Control Areas.
- (15) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants⁽¹⁾ recasts Directive 88/609/EEC. Directive 1999/32/EC should be revised accordingly, as provided for in Article 3(4) thereof.
- (16) It is appropriate for the existing Committee on Safe Seas and the Prevention of Pollution from Ships established by Regulation (EC) No 2099/2002⁽²⁾ to assist the Commission in the context of the approval of emission abatement technologies.
- (17) Emission abatement technologies, provided they have no adverse effect on ecosystems and are developed subject to appropriate approval and control mechanisms, can provide at least equivalent or even greater emissions reductions than using low sulphur fuel. It is essential that the correct conditions exist to promote the emergence of new emission abatement technologies.
- (18) The European Maritime Safety Agency should provide assistance to the Commission and Member States, as appropriate, in monitoring the implementation of this Directive.
- (19) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽³⁾.
- (20) Directive 1999/32/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 1999/32/EC is hereby amended as follows:

1) Article 1(2) shall be replaced by the following:

'2. Reductions in emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within Member States' territory, territorial seas and exclusive economic zones or pollution control zones.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

- (a) fuels intended for the purposes of research and testing;
- (b) fuels intended for processing prior to final combustion;

⁽¹⁾ OJ L 309, 27.11.2001, p. 1. Directive as amended by the 2003 Act of Accession.

⁽²⁾ OL L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

- (c) fuels to be processed in the refining industry;
- (d) fuels used and placed on the market in the outermost regions of the Community provided that the relevant Member States ensure that, in those regions:

- air quality standards are respected;
- heavy fuel oils are not used if their sulphur content exceeds 3 % by mass;

- (e) fuels used by warships and other vessels on military service. However, each Member State shall endeavour to ensure, by the adoption of appropriate measures not impairing the operations or operational capability of such ships, that these ships act in a manner consistent, so far as is reasonable and practical, with this Directive;
- (f) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;
- (g) any use of fuels in a ship necessitated by damage sustained to it or its equipment, provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly;
- (h) fuels used on board vessels employing approved emission abatement technologies in accordance with Article 4c.;

2) Article 2 shall be amended as follows:

- (a) in point 1, the first indent shall be replaced by the following:

‘any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 51 to 2710 19 69, or;

- (b) in point 2, the first subparagraph shall be replaced by the following:

‘gas oil means:

- any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 25, 2710 19 29, 2710 19 45 or 2710 19 49; or,
- any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65 % by volume (including

losses) distils at 250 °C and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.;

- (c) point 3 shall be replaced by the following:

‘3. *marine fuel* means any petroleum-derived liquid fuel intended for or in use on board a vessel, including those fuels defined in ISO 8217;’

- (d) the following points shall be inserted:

‘3a *marine diesel oil* means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMB and DMC grades in Table I of ISO 8217;

3b *marine gas oil* means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMX and DMA grades in Table I of ISO 8217;

3c *MARPOL* means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;

3d *MARPOL Annex VI* means the annex, entitled “Regulations for the Prevention of Air Pollution from Ships”, that the Protocol of 1997 adds to MARPOL;

3e *SOx Emission Control Areas* means sea areas defined as such by the International Maritime Organisation (IMO) under MARPOL Annex VI;

3f *passenger ships* means ships that carry more than 12 passengers, where a passenger is every person other than:

- (i) the master and the members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship, and

- (ii) a child under one year of age;

3g *regular services* means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:

- (i) according to a published timetable, or

(ii) with crossings so regular or frequent that they constitute a recognisable schedule;

3m *emission abatement technology* means an exhaust gas cleaning system, or any other technological method that is verifiable and enforceable.

(*) OJ L 301, 28.10.1982, p. 1. Directive as last amended by the 2003 Act of Accession;

3h *warship* means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;

(e) point 6 shall be deleted.

3) Article 3 shall be replaced by the following:

'Article 3

3i *ships at berth* means ships which are securely moored or anchored in a Community port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;

Maximum sulphur content of heavy fuel oil

1. Member States shall take all necessary steps to ensure that, as from 1 January 2003, heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.

3j *inland waterway vessel* means a vessel particularly intended for use on an inland waterway as defined in Council Directive 82/714/EEC of 4 October 1982 laying down technical requirements for inland waterway vessels (*), including all vessels which carry:

2. (i) Subject to appropriate monitoring of emissions by competent authorities this requirement shall not apply to heavy fuel oils used:

— a Community inland navigation certificate, as defined in Directive 82/714/EEC,

(a) in combustion plants which fall within the scope of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (*), which are considered new in accordance with the definition given in Article 2(9) thereof and which comply with the sulphur dioxide emission limits for such plants set out in Annex IV to that Directive and applied in accordance with Article 4 thereof.

— a certificate issued pursuant to Article 22 of the Revised Convention for the Navigation of the Rhine;

3k *placing on the market* means supplying or making available to third persons, against payment or free of charge, anywhere within Member States' jurisdictions, marine fuels for on-board combustion. It excludes supplying or making available marine fuels for export in ships' cargo tanks;

(b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are considered existing in accordance with the definition given in Article 2(10) thereof, where the sulphur dioxide emissions from these combustion plants are equal to or less than 1700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis, and where, from 1 January 2008, the emissions of sulphur dioxide from combustion plants subject to Article 4(3)(a) of Directive 2001/80/EC are equal to or less than those resulting from compliance with the emission limit values for new plants contained in Part A of Annex IV to that Directive and where appropriate applying Articles 5, 7 and 8 thereof;

3l *outermost regions* means the French overseas departments, the Azores, Madeira and the Canary Islands, as set out in Article 299 of the Treaty;

(c) in other combustion plants which do not fall under (a) or (b), where the sulphur dioxide emissions from those combustion plants do not exceed 1700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis;

(d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery, irrespective of the type of fuel or fuel combination used, are within a limit to be set by each Member State, which shall not exceed 1700 mg/Nm³. This shall not apply to combustion plants which fall under (a) or, from 1 January 2008, to those which fall under (b).

(ii) Member States shall take the necessary measures to ensure that any combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 shall not be operated without a permit issued by a competent authority, which specifies the emission limits.

3. The provisions of paragraph 2 shall be reviewed and, if appropriate, amended in the light of any future amendment of Directive 2001/80/EC.

(*) OJ L 309, 27.11.2001, p. 1. Directive as amended by the 2003 Act of Accession²;

4) Article 4 shall be amended as follows:

(a) With effect from 1 January 2010:

(i) in paragraph 1, the words 'including marine gas oils' shall be deleted;

(ii) paragraph 2 shall be deleted.

(b) With effect from (*), paragraphs 3 and 4 shall be deleted.;

5) The following Articles shall be inserted:

'Article 4a

Maximum sulphur content of marine fuels used in SO_x Emission Control Areas and by passenger ships operating on regular services to or from Community ports

1. Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SO_x Emission Control Areas if the sulphur content of those fuels exceeds 1,5 % by mass. This shall apply to all vessels of all flags, including vessels whose journey began outside the Community.

(*) Date of entry into force of this Directive.

2. The application dates for paragraph 1 shall be as follows:

(a) for the Baltic Sea area referred to in regulation 14(3)(a) of MARPOL Annex VI, ... (*);

(b) for the North Sea and any other sea areas, including ports, that the IMO subsequently designates as SO_x Emission Control Areas in accordance with regulation 14(3)(b) of MARPOL Annex VI:

— 12 months after entry into force of that designation, or

— (**),

whichever is the later.

3. Member States shall be responsible for the enforcement of paragraph 1 at least in respect of:

— vessels flying their flag; and

— in the case of Member States bordering SO_x Emission Control areas, vessels of all flags while in their ports.

Member States may also take additional enforcement action in respect of other vessels in accordance with international maritime law.

4. From the date referred to in paragraph 2(a), Member States shall take all necessary measures to ensure that marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones by passenger ships operating on regular services to or from any Community port if the sulphur content of those fuels exceeds 1,5 % by mass. Member States shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flags and vessels of all flags while in their ports.

5. From the date referred to in paragraph 2(a), Member States shall require the correct completion of ships' logbooks, including fuel-changeover operations, as a condition of ships' entry into Community ports.

6. From the date referred to in paragraph 2(a), Member States shall ensure that the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample.

7. From the date referred to in paragraph 2(a), Member States shall ensure that marine diesel oils are not placed on the market in their territory if the sulphur content of those marine diesel oils exceeds 1,5 % by mass.

(*) 19 May 2006 or, if later, 12 months after entry into force of this Directive.

(**) 12 months after entry into force of this Directive.

8. The Commission shall notify Member States of the application dates mentioned in paragraph 2(b) and publish them in the Official Journal of the European Union.

Article 4b

Maximum sulphur content of marine fuels used by inland waterway vessels and ships at berth in Community ports

1. With effect from 1 January 2010, Member States shall take all necessary steps to ensure that the following vessels do not use marine fuels with a sulphur content exceeding 0,1 % by mass:

- (a) inland waterway vessels; and
- (b) ships at berth in Community ports, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure.

Member States shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:

- (a) whenever, according to published timetables, ships are due to be at berth for less than two hours;
- (b) to inland waterways vessels that carry a certificate proving conformity with the International Convention for the Safety of Life at Sea, 1974, as amended, while those vessels are at sea;
- (c) until 1 January 2012 for the vessels listed in the Annex and operating exclusively within the territory of Greece.

3. With effect from 1 January 2010, Member States shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0,1 % by mass.

Article 4c

Trials and use of new emission abatement technologies

1. Member States may, in cooperation with other Member States, as appropriate, approve trials of ship emission abatement technologies on vessels flying their flag, or in sea areas within their jurisdiction. During these trials the

use of marine fuels meeting the requirements of Articles 4a and 4b shall not be mandatory, provided that:

- the Commission and any port State concerned are notified in writing at least 6 months before trials begin;
 - permits for trials do not exceed 18 months in duration;
 - all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;
 - all ships involved achieve emissions reductions which are at least equivalent to those which would be achieved through the limits on sulphur in fuel specified in this Directive;
 - there are proper waste management systems in place for any waste generated by the emission abatement technologies throughout the trial period;
 - there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period; and
 - full results are provided to the Commission, and made publicly available, within six months of the end of the trials.
2. Emission abatement technologies for ships flying the flag of a Member State shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) (*), taking into account:
- guidelines to be developed by the IMO;
 - results of any trials conducted under paragraph 1;
 - effects on the environment, including achievable emissions reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries;
 - feasibility of monitoring and verification.

3. Criteria shall be established for the use of emission abatement technologies by ships of all flags in enclosed ports, harbours and estuaries in the Community in accordance with the procedure referred to in Article 9(2). The Commission shall communicate these criteria to the IMO.

4. As an alternative to using low sulphur marine fuels meeting the requirements of Articles 4a and 4b, Member States may allow ships to use an approved emission abatement technology, provided that these ships:

- achieve emission reductions which are at least equivalent to those which would be achieved through the limits on sulphur in fuel specified in this Directive; and
- document thoroughly that any waste streams discharged into enclosed ports, harbours and estuaries have no impact on ecosystems, based on criteria communicated by the authorities of port States to the IMO.

(*) OJ L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).;

6) Article 6 shall be amended as follows:

(a) the following paragraph shall be inserted:

‘1a. Member States shall take the necessary measures to ensure that the sulphur content of marine fuels complies with the relevant provisions of Articles 4a and 4b.

Each of the following means of sampling, analysis and inspection shall be used as appropriate:

- sampling of the marine fuel for on-board combustion while being delivered to ships, following IMO guidelines, and analysis of its sulphur content;
- sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where feasible, and in sealed bunker samples on board ships;
- inspection of ships’ log books and bunker delivery notes.

Sampling shall commence on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency, in sufficient quantities, and in such a way that the samples are representative of the fuel examined, and of the fuel being used by ships while in relevant sea areas, ports and inland waterways.

Member States shall also take reasonable measures, as appropriate, to monitor the sulphur content of marine fuels other than those to which Articles 4a and 4b apply.’.

(b) in paragraph 2, point (a) shall be replaced by the following:

‘(a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine fuels;’.

7) Article 7 shall be replaced by the following:

‘Article 7

Reporting and review

1. On the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 6, Member States shall by 30 June of each year provide the Commission with a short report on the sulphur content of the liquid fuels falling within the scope of this Directive and used within their territory during the preceding calendar year. That report shall include a record of the total number of samples tested by fuel type and shall indicate the corresponding quantity of fuel used, and the calculated average sulphur content. Member States shall also report the number of inspections made on board ships, and record the average sulphur content of marine fuels used in their territory which do not fall within the scope of this Directive on (*).

2. On the basis, inter alia, of:

- (a) annual reports submitted in accordance with paragraph 1;
- (b) observed trends in air quality, acidification, fuel costs and modal shift; and
- (c) progress in reducing emissions of sulphur oxides from ships through IMO mechanisms following Community initiatives in this regard;
- (d) a new cost-benefit analysis, including direct and indirect environmental benefits, of measures contained in Article 4a(4),

the Commission shall, by 2008, submit a report to the European Parliament and to the Council.

(*) Date of entry into force of this Directive.

The Commission may submit with its report proposals for amending this Directive, in particular as regards a second stage of sulphur limit values laid down for each fuel category and, taking account of work within the IMO, the sea areas where low sulphur marine fuels are to be used.

3. By 31 December 2005, the Commission shall report to the European Parliament and to the Council on the possible use of economic instruments, including mechanisms such as differentiated dues and kilometre charges, tradable emission permits and offsetting.

4. Any amendments necessary to make technical adaptations to Article 2, points 1, 2, 3, 3a, 3b and 4 or Article 6(2) in the light of scientific and technical progress shall be adopted in accordance with the procedure referred to in Article 9(2). Such adaptations shall not result in any direct changes to the scope of this Directive or to limits on sulphur in fuel specified in this Directive.;

8) Article 9 shall be replaced by the following:

'Article 9

Committee procedure

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council 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.

(*) OJ L 184, 17.7.1999, p. 23.

9) The text set out in the Annex to this Directive shall be added.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall 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.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

(*) 12 months after the date of entry into force of this Directive.

ANNEX

‘ANNEX

GREEK VESSELS

Vessel's name	Delivery year	IMO number
Ariadne Palace	2002	9221310
Ikarus Palace	1997	9144811
Knossos Palace	2001	9204063
Olympia Palace	2001	9220330
Pasiphae Palace	1997	9161948
Festos Palace	2001	9204568
Europa Palace	2002	9220342
Blue Star I	2000	9197105
Blue Star II	2000	9207584
Blue Star Ithaki	1999	9203916
Blue Star Naxos	2002	9241786
Blue Star Paros	2002	9241774
Hellenic Spirit	2001	9216030
Olympic Champion	2000	9216028
Lefka Ori	1991	9035876
Sophoklis Venizelos	1990	8916607

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 28 November 2002, the Commission submitted to the Council a proposal for a Directive of the European Parliament and the Council amending Directive 1999/32/EC as regards **the sulphur content of marine fuels**.
2. The European Parliament adopted its opinion at first reading at its session from 2 to 5 June 2003.
3. The Economic and Social Committee submitted its opinion on 14 May 2003.
4. The Committee of the Regions indicated on 20 January 2003 its intention not to issue an opinion.
5. The Commission adopted an amended proposal on 1 August 2003.
6. On 9 December 2004, the Council adopted its common position in accordance with Article 251(2) of the Treaty.

II. OBJECTIVE

The proposed amendments to Directive 1999/32/EC seek to extend its scope to all types of petroleum-derived liquid fuels used on board ships and to limit the sulphur content of these marine fuels when being used by ships in certain parts of the European Union.

The objective is to reduce the ships emissions of sulphur dioxide and particulate matter (PM), as set out in the parallel EU strategy to reduce atmospheric emissions from seagoing ships. The proposal aims to implement the Sulphur Oxide Emission Control Areas already designated by the International Maritime Organisation (IMO) in its air pollution convention, MARPOL Annex VI. The proposal modifies the provisions of Directive 1999/32/EC concerning the sulphur content of marine fuels, as follows:

- introduce a limit of 1.5 % of sulphur content on marine fuels used by all seagoing vessels, in the Baltic, the North Sea and the English Channel, in line with MARPOL Annex VI, in order to reduce the effect ship's emissions on acidification in northern Europe;
- introduce a limit of 1.5 % of sulphur content on marine fuels used by passenger vessels in regular service to or from any Community port, in order to improve the quality of the air, particularly around ports and coasts and create a sufficient demand to ensure EU-wide supply of fuel with a sulphur content of not more than 1.5 %;
- amend the existing provision for marine gas oils by requiring ships at berth and inland waterway vessels to use fuels having a sulphur content of 0.1 % or less (from 1 January 2010), in order to reduce local emissions of SO₂ and PM and improve local air quality. A derogation for 16 specific vessels in Greece applies till 1 January 2012;
- In order to ensure that compliant fuels are available, ban the sale of marine gas oils (DMA and DMX grades) with more than 0.1 % sulphur content by 2010, to remove the current 0.2 % sulphur content limit on DMB and DMC grades marine diesel oils, and subsequently ban the sale of such fuels with more than 1.5 % sulphur content.

III. ANALYSIS OF THE COMMON POSITION

1. General

The European Parliament adopted 36 amendments to the Commission proposal.

In the Council's view, the common position constitutes a balanced compromise where:

- there is a coherent set of dates for entry into force of the Directive's provisions, taking into account the now imminent entering into force of MARPOL Annex VI (in May 2005);
- no derogations are laid down in conflict with the entering into force of MARPOL Annex VI and the establishment of SOxECAs;
- the technical and practical problems of the new requirements for ships at berth are taken into consideration in a reasonable manner, including the specific temporary derogation asked by EL for some Ro/Ro ferries.

MARPOL Annex VI enters into force internationally one year after it has been ratified by at least 15 flag States representing at least 50 % of the gross tonnage of the world merchant shipping. 17 countries have now ratified as on 15 October 2004 – Sweden, Norway, Singapore, the Bahamas, the Marshall Islands, Liberia, Denmark, Germany, Vanuatu, Panama, Greece, Bangladesh, Spain, Barbados, Samoa, Azerbaijan and the United Kingdom – representing more than 50 % of the world tonnage. Samoa, the 15th State, ratified MARPOL Annex VI on 19 May 2004, paving the way for Annex VI to be brought into operation from 19 May 2005 and Regulation 14 (Baltic Sea SOxECA) to be brought into operation on 19 May 2006. Six EU Member States (DK, DE, EL, ES, SE, UK) have already ratified MARPOL, and four Member States (NL, FI, CY, PL) are in the last stage of ratification, expected this year.

The common position is in accordance with positions taken by *the Commission and the European Parliament* as regards the objective to extend the scope of Directive 1999/32/EC to all petroleum-derived liquid fuels used on board ships operating in Member States waters.

The Council:

(a) Introduced in the common position 21 amendments in full, in part or in principle, as follows:

Amendment 1: the spirit of this amendment is incorporated in Recital 4.

Amendment 3: the spirit of this amendment is incorporated in Recital 5.

Amendment 4: the spirit of this amendment is included in Recital 4.

Amendment 5: the spirit of this amendment is incorporated in Recital 6.

Amendment 6: the spirit of this amendment is reflected both in Recitals 6 and 17.

Amendment 7: incorporated in full in Recital 7.

Amendment 8: the spirit of this amendment is included in Recital 10.

Amendment 40: according to general rules for the drafting of Community legislation the purpose of a recital is to set out concise reasons for a chief provision of the enacting terms, and they shall not contain normative provisions or political exhortations; however, the spirit of this amendment is reflected in Recital 12.

Amendment 18: the aim of this amendment is incorporated by Article 1(1)(d).

- Amendment 30: the spirit of this amendment is referred to in Recital 19.
- Amendment 38: the definition provided for in Article 2 (3j) follows the spirit of this amendment.
- Amendment 39: the definition provided for in Article 2 (3k) reflects the aim of this amendment in a more detailed and specific manner.
- Amendment 10: this amendment is included in Article 4 with consequential amendments as regards the timetable.
- Amendment 23: this is addressed by new Article 4b which postpones implementation until 2010 for all types of vessels.
- Amendment 43: this is addressed comprehensively by the new Article 4c.
- Amendment 27: this is reflected in the new text of Article 6 with the drafting clarified to avoid any technical difficulties in application.
- Amendment 29: the spirit of this amendment is followed in Recital 10 and is also addressed in Article 11 of Directive 99/32.
- Amendment 31: this concern is addressed by the use of the expression 'liquid fuels'.
- Amendment 32: the spirit of this amendment is reflected in Recitals 4 and 6 and Article 7.2.
- Amendment 33: is accepted.
- Amendment 44: the spirit of this amendment is reflected in Article 7.
- (b) did not incorporate 15 amendments (2, 4, 13, 14, 15, 16, 17, 21, 22, 28, 41, 42, 24, 25, 26, 37) in the common position:
- Amendment 2: this amendment could not be incorporated as it was not felt to be relevant.
- Amendments 14: this amendment could not be incorporated as the paragraph to which it relates has been deleted.
- Amendments 15, 16, 17: these amendments could not be incorporated. However, the spirit of these amendments is reflected in Article 4(a)2 which aims to bring forward entry into force to May 2006, to be aligned with MARPOL Annex VI.
- Amendments 21 and 22: could not be incorporated.
- Amendment 28: could not be incorporated.
- Amendment 41 and 42: could not be accepted because the Council felt it was premature to anticipate future legislation (a second phase) which would depend on the assessment of the application of the current amendments. Nevertheless, the need for further improvement in future is recognised by the new Article 7.2.
- Amendment 24: could not be incorporated.
- Amendment 25: could not be incorporated as it was not felt to be proportionate.
- Amendment 26: could not be accepted as Amendment 42 had been rejected (new Article 4.a.a).
- Amendment 37: could not be incorporated as the Council felt that 12 months would be necessary for transposition.
- (c) The Council introduced Article 4a (3) and (4) to clarify issues related to the enforcement of the Directive's different provisions.

IV. CONCLUSION

Despite the fact that the Council is not able to accept all amendments adopted by the European Parliament, it considers that the common position meets to a large extent the concern of the Parliament and that it is in line with the Commission's amended proposal, substantially reducing sulphur dioxide emissions in the EU, with reductions targeted to deliver the greatest possible benefits in and around populated ports and coastlines and in acid-sensitive ecosystems.

This exercise gives an incentive to EU Member States to do more internationally to improve environmental standards for ships and particularly through the ratification and strengthening of MARPOL Annex VI.
