

COMMISSION OF THE EUROPEAN COMMUNITIES

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FOURTEENTH REPORT BY THE COMMISSION

on the implementation of Council Regulation (EEC) No 543/69 of
25 March 1969 on the harmonization of certain social
legislation relating to road transport

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INTRODUCTION

Article 17 of Council Regulation (EEC) n° 543/69 lays down that "each year the Commission shall present to the Council a general report on the implementation of this Regulation by the Member States" and that "... Member States shall communicate to the Commission the necessary information using a standard form of report.....".

This report covers 1984 and gives a summary of the information supplied by the Member States on the implementation of Regulations (EEC) Nos 543/69 and 1463/70 in the European Community.

COMPARATIVE ANALYSIS OF INFORMATION
SUPPLIED BY THE MEMBER STATES

I. ORGANIZATION OF CONTROL

1. Authorized inspecting officers and their powers

In Belgium, the number of officers assigned to inspections fell from 233 to 223; in France, the number of inspecting officers and assistant inspecting officers authorized to check on the implementation of Regulations (EEC) Nos 543/69 and 1463/70 is 348.

In Greece, the system for monitoring implementation of social regulations is well established with a force of 600 officials of the Ministry of Labour who are authorized to inspect work places 24 hours a day. Inspections are carried out all year round and in relation to the time of year, the tourist season, fluctuations in traffic, etc. and, possibly, in response to complaints from workers' organizations.

The results of this organization can be seen from the increased number of inspections, which rose from 5.500 in 1983 to 21.200 in 1984.

In the United Kingdom, the number of traffic examiners rose from 212 to 225 and it is planned to increase this number to 235. In the other Member States there are no substantial changes over 1983 as regards inspecting officers.

2. Methods of inspection (place and frequency)

Germany carried out specific inspections in occasional passenger transport firms, discovering in one Land 135 infringements on 157 buses inspected; the infringements were related mainly to the use of the control device.

Ireland, which introduced in 1983 a system of inspection of the fitting of the tachograph combined with annual tests of vehicles (roadworthiness scheme), has also laid down that any goods carrier must - when submitting his annual application for renewal of his licence - include in that application the name and address of the approved workshop which fitted and calibrated the tachograph and the date of calibration.

As was previously announced, the United Kingdom has set up a computerized tachograph tape reader system, which provides a valuable backup for roadside inspections. Other improvements in this system are planned.

<u>NUMBER OF CHECKS CARRIED OUT IN 1984</u> ⁽¹⁾		
<u>Member State</u>	<u>Roadside</u>	<u>Undertaking</u>
BELGIUM	8.000	723
DENMARK	52.357	636
GERMANY	305.328	26.439
FRANCE	850.560 drivers 2.856.525 discs	36.794 drivers 387.243 discs
GREECE	21.200 (overall figure)	
IRELAND	17.500	2.774 drivers
ITALY	no information	no information
LUXEMBOURG	63	435 vehicles
NETHERLANDS	175.000	805
UNITED KINGDOM	215.875 + 47.500 silent checks	not registered

(1) The number of checks given above are incomplete in some cases, since they do not include all the checks carried out by all the authorities involved.

II. INFRINGEMENTS AND PENALTIES

To make the figures more comparable, they have, where possible, been brought together in the same form in the tables below, leaving blanks where no information was received, or the information received was inadequate or could not be used. It should be pointed out that because of the time lag in national legal systems, the figures given below for the number of prosecutions and the penalties imposed refer, in part, to infringements committed before 1984 and that some infringements detected in 1984 will not be prosecuted until 1985. Apart from that, the comments made in previous years with regard to infringements remain valid.

TABLE OF INFRINGEMENTS - 1984

(the figures relate to both goods and passenger transport operations)

Country	Infringements detected	Number of prosecutions	As % of infringements detected	Penalties imposed	As % of infringements detected
BELGIUM	3.444	296	9	35	1
DENMARK	5.397	3.733 ⁽¹⁾	69	1.122	21
GERMANY	130.587	95.991	74	42.230	32
FRANCE	364.783	130.931	36	(2)	-
GREECE	11.331	9.132	81	-	-
IRELAND	3.896	2.506	64	2.080	53
ITALY	118.375	-	-	-	-
LUXEMBOURG ⁽³⁾	151	12	8	-	-
NETHERLANDS	42.087	42.087	100	-	-
UNITED KINGDOM	15.108	8.455	56	2.739	18

(1) Denmark : plus 498 persons prosecuted.

(2) France : the figure for the number of cases in which action was taken on official reports drawn up by factory inspectors (transport) and road traffic controllers is 10.760. The action taken on official reports drawn up by other inspectors (police/gendarmerie) is not known.

(3) Luxembourg : The gendarmerie provides no information on infringements.

III. MULTILATERAL MUTUAL ASSISTANCE BETWEEN MEMBER STATES AND NOTIFICATION OF INFRINGEMENTS

A. In Belgium, the transport authorities were informed of 1.178 official reports drawn up by German, Dutch, Luxembourg and French inspectors in respect of Belgian drivers and of infringements committed by Belgian nationals on United Kingdom territory.

Denmark received 41 notifications of infringements committed by Danish nationals in the Netherlands (29) and France (12) and an unspecified number of notifications of fines paid by Danish drivers driving in Germany. The labour inspectorate has taken measures to prosecute those Danes who committed infringements in the Netherlands.

The Federal Republic of Germany has nothing to report on this matter.

France reports that it sent to other Member States lists of their nationals who had committed infringements of Regulations Nos 543/69 and 1463/70 on French territory.

Conversely, France says it received notice of infringements alleged to have been committed by French drivers in other Member States from Germany, Belgium, the Netherlands and the United Kingdom.

Ireland reports that it informed the British authorities of 14 infringements and had been informed by the United Kingdom of 75 infringements, by France of ten and by the Netherlands of two committed by Irish drivers in those countries.

Luxembourg was informed of 70 official reports drawn up by German, Belgian, Dutch and French inspectors in respect of Luxembourg drivers and said it had sent lists of official reports drawn up in respect of foreign drivers to their countries of origin.

The Netherlands reports that it transmitted 490 reports of infringements to Belgium, 44 to Denmark, 299 to the Federal Republic of Germany, 61 to the United Kingdom, 212 to France, one to Greece, two to Ireland, 32 to Italy, three to Luxembourg and 34 to non-Community countries and received 96 such reports from Belgium, some 4.000 from Germany and three from France.

The United Kingdom uses a computer to draw up a list of infringements committed by foreign drivers and will inform the other Member States of the most serious ones; a number of reports of infringements committed by British drivers in the other Member States were received by the United Kingdom and forwarded to the licensing authorities.

When the Court of Justice hands down judgments concerning social legislation in the field of road transport, the Commission communicates them for information purposes to the Member States. At the time when this report was drawn up, only Luxembourg and the United Kingdom had informed the Commission of judgments handed down by their national courts. It would be desirable for the other Member States to follow suit.

The Commission will send to the Member States those national judgments which seem to be of value for the interpretation and implementation of these Regulations. We feel that such an exchange of information is extremely important and is one factor likely to improve implementation of these Regulations in the European Community.

IV. SUGGESTIONS AND COMMENTS BY THE MEMBER STATES

A. Belgium regrets the lack of information from the gendarmerie, which has more than 1.500 officers carrying out roadside checks. It is therefore reasonable to assume that the number of infringements detected was higher.

The considerable increase in the number of infringements detected (from 690 to 3.444) is the result of an investigation which the labour inspectorate was instructed to carry out.

The Danish authorities feel that the level of compliance with the Regulations is satisfactory and put forward proposals for amendment of the standard report.

The Federal Republic of Germany attaches great importance to efforts to introduce rules which contribute to a genuine check on compliance with these Regulations in the Member States.

Italy suggested that a tachograph be developed which could not be fraudently manipulated and that severer penalties be applied, extending - in the most serious cases - to suspension or withdrawal of the carrier's licence.

Greece takes the view that checks on international transport on its territory will improve gradually as its inspecting officers acquire a degree of experience.

FINAL CONCLUSIONS BY THE COMMISSION

1. In the policy arguments as to the future organisation of the transport market within the European Community, the Commission's annual reports on the implementation of the Social Regulations have been given recently as a confirmation of the lack of harmonisation of competition conditions. The Commission is said to be supplying incontrovertible proof that the implementing measures of certain states in particular, and the very different practices as regards checks and penalties of this Community legislation are far from perfect.

This argument needs correcting or, at least, qualifying.

- Because of the differences in quantity and quality of the statistical data available, all the figures given should be assessed with care.
- Indisputably there are still major differences in the legal and administrative systems used by Member States to implement Community law. A more fundamental harmonisation of these Regulations can only be achieved in the long term.
However it is not so much the systems but their results which are relevant.
- As for the consequences on competition between transport enterprises in the Community, in so far as this is or should be influenced by the Social Regulations, a distinction has to be made between checks and penalties and, as regards the former, also between checks.
- The difference in the number of road checks by Member States does not greatly influence competition between transport operators of different nationalities. National and foreign operators are in principle subject to the same number of checks organised in a Member State.

- The effects of checks on the premises of operators should be judged differently. In this case, a greater regularity of checks by one Member State are a disadvantage for resident transport operators, if they are in competition with operators who are subject to fewer controls in their own country.
- The same is true for penalties for infringements of the Social Regulations. Here many factors of a historical, legal and psychological nature are at work. These prevent exactly the same penalties being granted for identical or comparable infringements by national authorities or national courts. These differing penalty systems mean that there is a danger that competition might be distorted.

- These comments are not intended to deny the existence of a problem or to make the situation look better than it is. They are only intended to put the arguments in proportion. The opening of transport markets and the integration of the transport economy in the Common Market must be accompanied by measures intended to eliminate the difference described here.

2. Indeed from the information provided, or the lacunae in some cases, it is evident that there remains considerable room for such improvements.

Regulations (EEC) Nos 3820/85 and 3821/85 were adopted by the Council on 20 December 1985 and entered into force on 29 September 1986. They were accompanied by a Council resolution calling for improvements in their implementation, in particular by better systems of checks and tougher penalties. Demands for improvements also came from the Parliament, the Economic and Social Committee and the two sides of industry. They will not go away.

All eyes will be on Member States to see that they live up to these expectations. The Commission trusts that they will take the opportunity of a fresh start with new legislation to ensure that their national legal and administrative measures are sufficiently effective to achieve greater compliance with the Regulations. The Commission will monitor their implementation with particular attention.

Better implementation of the Social Regulations is essential not only for the achievement of their objectives, but also the common transport policy in general. The social Regulation remains one important aspect of the harmonisation of competitive conditions in inland transport modes, along with technical and fiscal harmonisation. It constitutes one of the measures which should accompany the evolution towards the freedom of services called for in the Judgment of 22 May 1985 by the Court of Justice.