

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (82) 273 final

Brussels, 17 May 1982

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning

the consultation of the two sides of industry by the Member States on

- ILO Convention 1153 concerning hours of work and rest periods in road transport;
- ILO Recommendation 161 concerning hours of work and rest periods in road transport

adopted by the International Labour Conference in 1979

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning

the consultation of the two sides of industry by the Member States on

- ILO Convention 153 concerning hours of work and rest periods in road transport;
- ILO Recommendation 161 concerning hours of work and rest periods in road transport

adopted by the International Labour Conference in 1979

Introduction

1. In accordance with Article 19(5)(b) and (c) of the ILO Constitution the Member States submitted the two instruments referred to above to the authorities "within whose competence the matter lies, for the enactment of legislation or other action" and informed the Director-General of the International Labour Office accordingly.
2. Although the identical letters by which the Member States informed the Director-General of the International Labour Office of the submission of the abovementioned instruments indicate that the matters covered by Convention 153 fall within the Community's jurisdiction while those covered by Recommendation 161 fall within the joint jurisdiction of the Communities and the Member States, it was understood that these letters in no way affect the question of ratification or other action to be taken on such instruments (cfr. 11321/80 and 12501/80).
3. According to a Memorandum from the Governing Body of the International Labour Office⁽¹⁾, the instruments submitted "should always be accompanied or followed by a statement or proposal setting out the Government's views as to the action to be taken on the instruments".

(1) "Memorandum concerning the Obligation to submit Conventions and Recommendations to the Competent Authorities" - Article 19 of the ILO Constitution - Geneva, 1980, ref. Appl. 19 S (rev.3).

4. Under ILO Convention 144, Governments are required to consult their national employers' and workers' organizations on the statement or proposals referred to above.
5. In a working paper submitted on 19 June 1981⁽¹⁾, the Commission's departments stated that the views expressed by the national organizations on a convention or recommendation submitted to the Community should be notified by the Member States to the Commission prior to the submission by the latter to the Council of the proposal concerning that convention or recommendation and that this procedure should be followed in particular for Convention 153 and Recommendation 161. A Commission proposal on those two instruments will consequently be forwarded to the Council after the Member States have made known to the Commission the views expressed on the subject by the national professional and trade union organizations concerned.
6. It is customary for Member States to consult employers and workers on the basis of a Government proposal. In the case in question, in view of the fact that the matters covered by Convention 153 and some of those covered by Recommendation 161 are the subject of Community regulations, it is felt that the Member States should have at their disposal a Commission working paper setting out what action could be taken from a technical and legal point of view on the ILO instruments which would enable them to consult the employers and workers in their countries.
7. The Community instruments in question are the following :
 - (a) Council Regulation (EEC) No 543/69 of 25 March 1969 on the harmonization of certain social legislation relating to road transport (OJ No L 77, 29.3.1969, p. 49) and the amendments arising out of the Regulations set out below :
 1. Regulation (EEC) No 514/72 (OJ No L 67, 20.3.1972, p. 1),

(1) Commission working paper

- Observations on the ILO document entitled "The relationship of rights and obligations under the Constitution of the ILO to rights and obligations under treaties establishing regional groupings" (GB 215/SC/4/1, 215th session, Geneva, February-March 1981) (Doc. SEC(81) 887)

2. Regulation (EEC) No 515/72 (OJ No L 67, 20.3.1972, p. 11)
3. Regulation (EEC) No 2827/77 (OJ No L 334, 24.12.1977, p. 1),
4. Regulation (EEC) No 2829/77 (OJ No L 334, 24.12.1977, p. 11).

(b) Council Regulation (EEC) No 1463/70 on the introduction of recording equipment in road transport (OJ No L 164, 27.7.1970), as amended by Council Regulation (EEC) No 1787/73 of 25 June 1973 (OJ No L 181, 4.7.1973) and Council Regulation (EEC) No 2828/77 of 12 December 1977 (OJ No L 394, 24.12.1977).

8. The ratification of Convention 153 and Recommendation 161 would imply amendments to the Community regulations in question. It should also be borne in mind that the Commission is currently re-examining the Community regulations in order to improve their application. Naturally, this re-examination must not be allowed to increase the difficulties in the areas covered by this document.

Convention 153 concerning hours of work and rest periods in road transport

9. A detailed examination of Convention 153 and Community regulations reveals a number of minor, even insignificant, differences⁽¹⁾.

Only one difference appears really important; it concerns breaks.

(1) The transport of animal carcasses or waste not intended for human consumption (Article 14a(2)(c) of Regulation (EEC) No 543/69).

Breaks

Article 7 of the Convention contains the following provisions on this matter :

- "1. Every wage-earning driver shall be entitled to a break after a continuous
" period of five hours of work as defined in Article 4, paragraph 1, of this
" Convention.
- "2. The length of the break referred to in paragraph 1 of this Article and,
" as appropriate, the way in which the break may be split shall be determined
" by the competent authority or body in each country."

Furthermore, Article 4 of the Convention defines "hours of work" as follows:

- "1. For the purpose of this Convention the term "hours of work" means the time
" spent by wage-earning drivers on -
" (a) driving and other work during the running time of the vehicle; and
" (b) subsidiary work in connection with the vehicle, its passengers or
" its load.
- "2. Periods of mere attendance or stand-by, either on the vehicle or at the
" workplace and during which the drivers are not free to dispose of their
" time as they please, may be regarded as hours of work to an extent to be
" prescribed in each country by the competent authority or body, by collective
" agreements or by any other means consistent with national practice."

10. Regulation (EEC) No 543/69, however, does not specify the time of the break in relation to working time and therefore allows the driver to carry out work other than driving for an unlimited period and then drive for four hours immediately afterwards without being obliged to take a break (Article 7 and 8); this allows the worker to work within the meaning of Article 4(1) of the Convention for six or seven hours or even longer before taking a break.
11. In Article 17(1) of its proposal for a Council Regulation on the harmonization of certain social legislation relating to road transport of 9 March 1976⁽¹⁾, the Commission proposed a similar system to Article 7 of the Convention but with the following two differences:

(1) OJ No C 103, 6.5.1976

- in the Commission proposal, periods of mere attendance at work cannot be considered as a break, while Article 7 specifically states (as a result of an amendment put forward by the Nine) that "break" means "an interruption of work within the meaning of Article 4(1) (actual work);
- the Commission proposal lays down that the break should be taken after four hours, while the Convention stipulates that it should be taken after five hours.

It should be noted that these two aspects are still being discussed within the Council.

12. Naturally, there are alternatives to the solutions put forward in the Commission's 1976 proposal.

The most obvious solution would be to replace the breaks after four hours of continuous driving laid down in Regulation (EEC) No 543/69 by breaks after four hours of work within the meaning of Article 17 of the Commission Proposal of 9 March 1976. The basis for defining "hours of work" would be the activities referred to in Article 14(2) (c) and (d) of Regulation (EEC) No 543/69, and the possibilities of splitting up the break provided for in Article 8(1), second subparagraph, and the special arrangements for a two-man crew specified in Article 8(4) would continue to apply. The length of breaks would be the same for both one-man and two-man crews.

13. The elimination of the differences between ILO Convention 153 and Regulation No 543/69 would enable the latter to be regarded as the measure making effective the provisions of the said Convention, within the meaning of Article 19(5)(d) of the ILO Constitution.
14. In conclusion, the Commission feels that ratification of this Convention is desirable for reasons of social progress, harmonization of conditions of competition and road safety.

Recommendation 161 concerning hours of work and rest periods in road transport

Preliminary remarks

15. In order to ensure that Member States have the most complete list possible of the differences between the two ILO instruments in question and Community regulations for the purpose of consulting their employers' and workers' organizations, the Commission has also examined Recommendation 161.

16. Daily spreadover

On this point, paragraph 13 of the Recommendation stipulates the following:

"1. The competent authority or body in each country should prescribe for the various branches of the road transport industry the maximum number of hours which may separate two successive daily rest periods.

"2. The spreadover should not be so long as to reduce the period of daily rest to which the workers are entitled".

17. The proposal for a Council Regulation on the harmonization of certain social legislation relating to road transport submitted by the Commission to the Council on 9 March 1976⁽¹⁾ satisfies all these requirements.

Weekly rest

18. On this point Recommendation 161 contains the following provisions:

"23. The minimum duration of the weekly rest should be 24 consecutive hours, preceded or followed by the daily rest.

"24. The weekly rest should, as far as possible, coincide with a Sunday or with traditional and customary days of rest, and it should during a given period be possible for this rest to be spent at home a certain number of times, to be determined by the competent authority or body in each country.

"25. In long-distance transport, it should be possible to cumulate weekly rest over two consecutive weeks. In appropriate cases, the competent authority or body in each country may approve the cumulation of this rest over a longer time.

(1) OJ No C 103, 6.5.1976, p. 2

19. Article 12 of Regulation (EEC) No 543/69 should therefore be amended to meet the requirements of paragraph 24.

As regards the requirements specified in paragraph 25, these would be met if the Council adopted the definition of "week" contained in Article 1(4) of the Commission proposal of 9 March 1976.