

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (79) 301 final

Brussels, 6 June 1979

Recommendation for a
COUNCIL DECISION

authorizing the Commission to participate in the sixty-fifth International
Labour Conference on the negotiations for the revision of ILO Convention
No 67 on hours of work and rest periods in road transport

(presented by the Commission to the Council)

COM (79) 301 final

JUSTIFICATION

The provisions of the draft Convention denoted to the revision of ILO Convention n° 67 on hours of work and rest periods in road transport cover the same subjects as those governed at Community level by the Council Decision of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by road, rail and inland waterways(1); some of these provisions are similar to those provided for in Council Regulation (EEC) n° 543/69 (2), whilst others are covered in the proposal for a Council Regulation (EEC) on the harmonisation of certain social legislation relating to road transport, forwarded to the Council by the Commission on 9 March 1976 (3).

In addition to that explicitly specified in the Treaty, the Community competence to conclude agreements does not only result from a provision in the Treaty (as in the case of art. 113 and 239) but can also result implicitly from other provisions of the Treaty and secondary legislation. In particular, Member States may no longer conclude international commitments in all cases where common rules of secondary legislation have been adopted for the execution of a policy provided for in the Treaties (4)

(1) O.J. N° 88, 24.5.1965

(2) Council Regulation (EEC) N° 543 of 25 March 1969 on the harmonisation of certain social legislation relating to road transport (OJ N° L 77, 29.3.69, amended by :

- Council Regulation (EEC) n° 514/72 of 28.2.1972, (OJ N° L 67, 20.3.1972)
- Council Regulation (EEC) n° 515/72 of 28.2.1972, (OJ N° L 67, 20.3.1972)
- Council Regulation (EEC) n° 2827/77 of 12.12.1977, (OJ N° L 334, 24.12.1977)
- Council Regulation (EEC) n° 2829/77 of 12.12.1977 on the bringing into force of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) (OJ N° L 334, 24.12.1977)

(3) OJ N° C 103, 6.5.1976

(4) Judgement Commission against the Council of 31 March 1971, Case 22/70, Casebook 1971, p. 263, et al (EART)

Wherever the Community has an external competence, it is up to the Commission under art. 228 to negotiate international agreements and for the Council to conclude the agreements. It must act in the framework of directives which the Council may give, and give in a precise way. The Council is carrying out its power to authorise negotiations or give directives for the conduct of such negotiations, must act on a Recommendation or proposal from the Commission.

The Member States are closely associated with the negotiations, particularly through a special Committee.

The negotiating mandate for the Commission requested in this proposal does not prejudge the ratification by the Member States of the Convention which might result from the 65th session of the International Labour Conference.

Recommendation

for a Council Decision authorising the Commission to participate in the 65th International Labour Conference in the negotiations for the revision of ILO Convention No 67 on hours of work and rest periods in road transport.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the recommendation from the Commission;

Whereas the revision of ILO Convention No 67 on hours of work and rest periods in road transport will be one of the matters discussed at the 65th session of the International Labour Conference;

Whereas the provisions of the draft Convention cover the same subjects as those governed at Community level by the Decision 65/27/EEC of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway¹; whereas certain of these provisions are similar to those provided for in Council Regulation (EEC) No 543/69² whilst others are covered by the proposal for a Council Regulation (EEC) on the harmonization of certain social legislation relating to road transport³ forwarded to the Council by the Commission on 9 March 1976 .

¹ OJ No 88, 24.5.1965, p. 500/65;

² Council Regulation (EEC) No 543 of 25 March 1969 on the harmonization of certain social legislation relating to road transport (OJ No L 77 29.3.69, as amended by

- Council Regulation (EEC) No 514/72 of 28 February 1972 (OJ No L 67, 20.3.1972)

- Council Regulation (EEC) No 515/72 of 28 February 1972 (OJ No L 67, 20.3.1972)

- Council Regulation (EEC) No 2827/77 of 12 December 1977 (OJ No L 334, 24.12.1977)

- Council Regulation (EEC) No 2829/77 of 12 December 1977 on the bringing into force of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR). (OJ No L 334, 24.12.1977) ;

³ OJ No C 103 , 6.5.1976 , p. 2.

WHEREAS in view of its powers in the subjects covered by ILO Convention No 67 on hours of work and rest periods in road transport it is important for the European Economic Community to participate in the negotiations alongside its Member States with a view to revising the said agreement.

HAS DECIDED AS FOLLOWS

Sole Article

The Commission is hereby authorized to participate in the negotiations concerning the revision of ILO Convention No 67 on hours of work and rest periods in road transport with a view to enabling the European Economic Community to become a contracting party to this Convention.

It shall carry out these negotiations with the assistance of a special committee composed of representatives of the Member States, and in accordance with the attached directives and any subsequently given to it.

Done at Brussels,

1979

For the Council

Directives from the Council to the Commission

- A. The Commission, while taking full account of the specific problems related to the Tripartite system applied to International Labour Conferences, will endeavour to ensure that the draft revision of Convention No 67 of the ILO on hours of work and rest periods in road transport, to be negotiated during the 65th session of the International Labour Conference, is compatible with the measures already undertaken by the Community, in particular by Council Regulation (EEC) No 543/69 of the 25 March 1969 and Council Regulation (EEC) No 2827/77 of 12 December 1977, concerning the harmonisation of certain social legislation relating to road transport.

The draft revised Convention must contain provision for the European Economic Community to become eventually a contracting party. The provisions to be laid down to this end will take account of the specific character of the conventions adopted by International Labour Conferences.

- B. The annex to this document is a first working paper for the Commission's negotiations.

ANNEX

Working document for Commission negotiations concerning
the revision of ILO Convention no. 67
on hours of work and rest periods in road transport
(item on the agenda of the 65th session of the International
Labour Conference in Geneva from 6 to 27 June 1979)

In this document the Commission presents proposals and comments on the draft convention and recommendations concerning hours of work and rest periods in road transport on the Agenda of the 65th Session of the International Labour Conference (ILO - Geneva, 6 to 27 June 1979) in connection with the revision of ILO Convention no 67 concerning hours of work and rest periods in road transport.

A. Proposed convention concerning hours of work and rest periods in road transport

Article 1

Paragraph 1 to read as follows :

This Convention applies to the work of drivers' mates, attendants, conductors and other wage-earners employed on motor vehicles engaged in

Paragraph 2 to read as follows :

This Convention also applies to the work in road transport of owners of vehicles and non-wage-earning members of their families working as drivers, drivers' mates, attendants, conductors or in any other capacity in road transport.

Article 2

1 (a) : delete

1 (e) to read as follows :

transport for the purpose of national defence, police services and fire-fighting services and, insofar as it is not in competition with that effected by undertakings engaged in transport for third parties, transport for the purpose of other essential public authority services.

6 (f) to read :

transport by taxi

(g) delete.

This provision is too vague and could usefully be replaced by the following subparagraphs :

- (g) transport of goods where the authorized maximum weight of the vehicle is 3.5 tonnes;
- (h) transport of circus and entertainment equipments;
- (i) transport in connection with specialized breakdown services;
- (j) transport of passengers by vehicles designed and fitted to carry up to 15 passengers including the driver;
- (k) transport of live animals from agricultural undertakings to local markets and vice-versa, and the transport of carcasses or waste not for human consumption from slaughterhouses.

Article 4

Paragraph 2 - delete

Retention of this provision would have the effect of raising the maximum period of continuous driving from 4 to 5 hours.

Paragraph 3 (becomes para. 2) should read :

The minimum length of the break referred to in this Article is fixed at 30 minutes

(Regulation (EEC) No 543/69, Article 8). As appropriate, the way in which the break may be split shall be determined by the competent authority or body in each country.

Paragraph 4 - delete

In that this provision goes beyond the notion of the split in the break referred to in paragraph 3 (new paragraph 2) it opens the way for abuse.

Article 5

Paragraph 1 to read as follows :

The maximum total driving time shall exceed neither eight hours per day nor 46 hours per week. The maximum driving time may be extended to nine hours twice a week (Regulation (EEC) No 543/69, Article 7 (2) (3)).

Paragraph 2 - delete

Retention of this provision would have the effect of cancelling the provisions under 1.

Paragraph 3 becomes paragraph 2.

Article 6

to read as follows :

Paragraph 1 - No driver working as a paid employee shall work for a continuous period of more than four hours without a break.

Paragraph 2 - The minimum length of the break referred to in paragraph 1 of this Article is fixed at thirty minutes. Where appropriate, the way in which the break may be split shall be determined by the competent authority or body in each country.

Paragraph 3 - For the purposes of this Convention, the term "work" shall be taken to mean being at the employer's disposal at the place of work.

Article 7

No comment. But it should be mentioned that the provisions of this Article are more favourable for crew members than the provisions of Article 11 (3) and (4) of Regulation (EEC) 543/69 relating to crews consisting of two drivers.

Article 8

A distinction should be made between the events dealt with in Article 13 a of Regulation (EEC) n° 543/69 and the urgent cases where there is an exceptional need to ensure the operations of public utility services. This Article could therefore be worded as follows :

1. In urgent cases where there is an exceptional need to ensure the operation of public utility services, the competent authority or body in each country may permit as temporary exceptions but only insofar as may be necessary for the performance of indispensable work, extensions of driving time, extensions of continuous working time, and reductions in the duration of the daily rest periods provided for in Articles 4, 5, 6 and 7 of this Convention.
2. Provided it does not jeopardize the safety of traffic, the driver may disregard Articles 4, 5, 6 and 7 of this Convention to provide assistance in the case of danger, force majeure, or following a breakdown, to the extent necessary to ensure the safety of persons, the vehicle or its load and to enable him to reach an appropriate stop, or depending on the circumstances, the end of the journey. The driver should mention the type and reason for the derogation in the individual control book or record it on the control equipment.

3. The competent authority or body in each country shall lay down a procedure for notification of the hours of overtime worked in accordance with paragraphs 1 and 2.
- B. Proposed recommendation concerning hours of work and rest periods in road transport
1. (a) To read "drivers";
(b) Delete the words "in a professional capacity".
 2. On the third line delete the words "in a professional capacity"
 3. Include the list proposed in this document under Article 2 (1) of the proposed Convention
- 5 + 6. To read :

For the purposes of this recommendation, the term "hours of work" relates to all times when paid employees are at the employer's disposal at the place of work and, with respect to vehicle owners and non-employed family members, it includes the time worked in connection with driving, other work while the vehicle is on the road or subsidiary work done in connection with the transport vehicle, its passengers or its load.

Comment :

A clear definition corresponding to the one in force for most workers is essential. The flexibility that may prove necessary, to take account of the high proportion of periods of attendance or stand-by at the place of work, should be covered by a system of exceptions.

(IV) Normal hours of work

It is essential to introduce this section by giving a definition of the concept of "normal" hours of work. The following text is proposed : "Normal hours of work means the period worked which is not covered by a derogation granted by the competent authority from a special agreement concluded between workers and employers or provisions or from agreements relating to overtime".¹

¹This text forms the basis of comparative studies on working time, rest periods and earnings in maritime transport, civil aviation and ports which were decided by the Commission on 17 November 1977 and are in progress.

7. To read as follows :
"Normal hours of work should not exceed a standard of between 40 and 48 hours per week".
10. To read as follows :
Normal hours of work should not exceed 8 hours per day.
Comment
N.B. Any hours worked in excess of the normal hours, even those which would automatically be offset by the rule requiring observance of the normal hours of work as an average, should be included in the system of exceptions and overtime.
11. To read as follows :
(1) No worker should work continuously for more than a maximum of four hours without a break.
(2) The minimum duration of the break referred to in sub-paragraph (1) shall be thirty minutes. The way it is split should be determined by the competent authority or body in each country.
14. (2) Delete - see proposed Convention.
(3) To read as follows :
The minimum duration of the break referred to in this paragraph shall be thirty minutes. Where appropriate, the way it is split should be determined by the competent authority or body in each country.
(4) Delete - see proposed Convention, Article 4 (4).
15. Should read : "neither eight hours per day nor 46 hours per week.
16. Delete - see proposed Convention, Article 5 (2).
22. (1) should be 29 consecutive hours
(2) New - to read :
The break referred to in paragraph 1 may be reduced to as little as 24 consecutive hours provided a rest period equivalent to the reduction is granted in the same week to the crew member concerned.
25. Repeat the wording in Article 8 of the proposed Convention.