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COMMISSION DIRECTIVE 2009/5/EC

of 30 January 2009

amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities

(Text with EEA relevance)

(OJ L 29, 31.1.2009, p. 45)

Corrected by:

►**C1** Corrigendum, OJ L 256, 29.9.2009, p. 38 (2009/5/EC)

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COMMISSION DIRECTIVE 2009/5/EC

of 30 January 2009

amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC ([1]), and in particular Article 9(3) thereof,

Whereas:

(1) Directive 2006/22/EC contains in its Annex III an initial list of infringements of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 ([2]) as well as Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport ([3]).

(2) Article 9(3) of Directive 2006/22/EC provides for the possibility to adapt that Annex with a view to establishing guidelines on a common range of infringements, divided into categories. The most serious infringements are to include those which create a serious risk of death or serious personal injury.

(3) Providing further guidance on the categorisation of infringements is an important step towards ensuring legal certainty for undertakings and fairer competition between undertakings.

(4) A harmonised categorisation of infringements is also desirable in order to provide a common basis for the risk rating systems which Member States have to introduce according to Article 9(1) of Directive 2006/22/EC. Based on these harmonised categories, the inclusion of infringements committed by a driver or an undertaking in other Member States than the Member State of establishment would be facilitated.

(5) As a general rule, the categorisation of infringements should depend on their gravity and the possible consequences for road safety, as well as on the ability to control the driver's and the undertaking's compliance with the legislation.

(6) The measures provided for in this Directive are in accordance with the opinion of the Committee set up by Article 18(1) of Regulation (EEC) No 3821/85,

HAS ADOPTED THIS DIRECTIVE:

([1]) OJ L 102, 11.4.2006, p. 35.
([2]) OJ L 102, 11.4.2006, p. 1.
([3]) OJ L 370, 31.12.1985, p. 8.

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Article 1

Annex III to Directive 2006/22/EC is replaced by the text in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2009 at the latest. 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 those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

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ANNEX

'*ANNEX III*

Infringements

In accordance with Article 9(3), the following table contains guidelines on a common range of infringements against Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85, divided into categories according to their gravity.

1. **Groups of infringements against Regulation (EC) No 561/2006**

No	Legal basis	Type of infringement		Level of seriousness (*)		
				VSI	SI	MI
A	**Crew**					
A1	Art. 5.1	►C1 Not respecting minimum ages for conductors ◄			X	
B	**Driving periods**					
B1	Art. 6.1	Exceed daily driving time of 9 h if possibilities to extend to 10 h not allowed	9 h<…<10 h			X
B2			10 h<…<11 h		X	
B3			11 h<…	X		
B4		Exceed extended daily driving time of 10 h if extension allowed	10 h<…<11 h			X
B5			11 h<…<12 h		X	
B6			12 h<…	X		
B7	Art. 6.2	Exceed weekly driving time	56 h<…<60 h			X
B8			60 h<…<70 h		X	
B9			70 h<…	X		
B10	Art. 6.3	Exceed accumulated driving time during 2 consecutive weeks	90 h<…<100 h			X
B11			100 h<…<112 h 30		X	
B12			112 h 30<…	X		
C	**Breaks**					
C1	Art. 7	Exceed uninterrupted driving time	4 h 30<…<5 h			X
C2			5 h<…<6 h		X	
C3			6 h<…	X		
D	**Rest periods**					
D1	Art. 8.2	Insufficient daily rest period of less than 11 h if reduced daily rest period not allowed	10 h<…<11 h			X
D2			8 h 30<…<10 h		X	
D3			…<8 h 30	X		
D4		Insufficient reduced daily rest period of less than 9 h if reduce allowed	8 h<…<9 h			X
D5			7 h<…<8 h		X	
D6			…<7 h	X		
D7		Insufficient split daily rest period of less than 3 h+9 h	3 h+(8 h<…<9 h)			X
D8			3 h+(7 h<…<8 h)		X	
D9			3 h+(…<7 h)	X		
D10	Art. 8.5	Insufficient daily rest period of less than 9 h for multi-manning	8 h<…<9 h			X
D11			7 h<…<8 h		X	
D12			…<7 h	X		

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No	Legal basis	Type of infringement		Level of seriousness (*)		
				VSI	SI	MI
D13	Art. 8.6	Insufficient reduced weekly resting period of less than 24 h	22 h<…<24 h			X
D14			20 h<…<22 h		X	
D15			…<20 h	X		
D16		Insufficient weekly resting period of less than 45 h if reduced weekly resting period not allowed	42 h<…<45 h			X
D17			36 h<…<42 h		X	
D18			…<36 h	X		
E	**Types of payment**					
E1	Art. 10.1	Link between wage and distance travelled or amount of goods carried		X		

(*) VSI = Very Serious Infringement/SI = Serious Infringement/MI = Minor Infringement.

2. **Groups of infringements against Regulation (EEC) No 3821/85**

No	Legal basis	Type of infringements	Level of seriousness (*)		
			VSI	SI	MI
F	**Installation of recording equipment**				
F1	Art. 3.1	No type approved recording equipment installed and used	X		
G	**Use of recording equipment, driver card or record sheet**				
G1	Art. 13	Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and sealed)	X		
G2		Recording equipment improperly used (not using a valid driver card, voluntary abuse, …)	X		
G3	Art. 14.1	Not carrying a sufficient number of record sheets		X	
G4		Model of record sheet not approved		X	
G5		Not carrying enough paper for printouts			X
G6	Art. 14.2	Undertaking not keeping record sheets, printouts and downloaded data	X		
G7	Art. 14.4	Driver holding more than one valid driver card	X		
G8	Art. 14.4	Use of driver card which is not the driver's own valid card	X		
G9	Art. 14.4	Use of defective or expired driver card	X		
G10	Art. 14.5	Recorded and stored data not available for at least 365 days	X		
G11	Art. 15.1	Use dirty or damaged sheets or driver cards and data legible			X
G12		Use dirty or damaged sheets or driver cards and data not legible	X		
G13		Failure to apply for replacement of damaged, malfunctioning, lost or stolen driver card within 7 calendar days		X	

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No	Legal basis	Type of infringements	Level of seriousness (*)		
			VSI	SI	MI
G14	Art. 15.2	Incorrect use of record sheets/driver cards	X		
G15		Unauthorised withdrawal of sheets or driver card which has an impact on the record of relevant data	X		
G16		Unauthorised withdrawal of sheets or driver card without any impact on data recorded			X
G17		Record sheet or driver card used to cover a period longer than that for which it is intended but no data is lost			X
G18		Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost	X		
G19		Not using manual input when required to do so	X		
G20		Not using correct sheet or driver card not in the correct slot (multi-manning)	X		
G21	Art. 15.3	Time recorded on the sheet does not agree with official time of country of registration of the vehicle		X	
G22		Incorrect use of switch mechanism	X		
H	**Fill in information**				
H1	Art. 15.5	Surname missing on record sheet	X		
H2		First name missing on record sheet	X		
H3		Date of begin or end of use of the sheet missing		X	
H4		Place of begin or end of use of the sheet missing			X
H5		Registration number missing on record sheet			X
H6		Odometer reading (start) missing on record sheet		X	
H7		Odometer reading (end) missing on record sheet			X
H8		Time of change of vehicle missing on record sheet			X
H9	Art. 15.5a	Symbol of country not entered in recording equipment			X
I	**Producing information**				
I1	Art. 15.7	Refuse to be checked	X		
I2	Art. 15.7	Unable to produce records of current day	X		
I3		Unable to produce records of previous 28 days	X		
I4		Unable to produce records of the driver card if the driver holds one	X		
I5		►C1 Unable to produce manual records and printouts made during the current day and the previous 28 days ◄	X		
I6		Unable to produce driver card	X		
I7		►C1 Unable to produce printouts made during the current day and the previous 28 days. ◄	X		

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No	Legal basis	Type of infringements	Level of seriousness (*)		
			VSI	SI	MI
J	**Fraud**				
J1	Art. 15.8	Falsify, suppress, destroy data recorded on record sheets, stored in the recording equipment or on the driver card or print-outs from the recording equipment	X		
J2		Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified	X		
J3		Manipulation device that could be used to falsify data and/or printouts information present on vehicle (switch/ wire …)	X		
K	**Breakdown**				
K1	Art. 16.1	Not repaired by an approved fitter or workshop	X		
K2		Not repaired en route		X	
L	**Manual input on printouts**				
L1	Art. 16.2	Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning	X		
L2		Driver card number and/or name and/or driving licence number missing on temporary sheet	X		
L3		Signature missing on temporary sheet		X	
L4	Art. 16.3	Lost or theft of driver card not formally declared to the competent authorities of the Member State where the theft occurred	X		

(*) VSI = Very Serious Infringement/SI = Serious Infringement/MI = Minor Infringement.'