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on the implementation of social legislation relating to road transport
(2008/2062(INI))

Committee on Employment and Social Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of social legislation relating to road transport (2008/2062(INI))

The European Parliament,

- having regard to the report from the Commission to the Council and the European Parliament on the consequences of the exclusion of self-employed drivers from the scope of the 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 (COM(2007)0266),
- having regard to the 23rd report of the Commission on the implementation in 2003-2004 of Regulation (EEC) No 3820/85 on the harmonisation of certain social legislation relating to road transport (COM(2007)0622),
- having regard to Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport¹,
- having regard to 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 activities²,
- having regard to 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 3820/85³,
- 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) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC⁴,
- having regard to cases C-184/02 and C-223/02 (joined cases) of 24 September 2004 (Kingdom of Spain and Republic of Finland v. European Parliament and Council of the European Union⁵), which attempted unsuccessfully to exclude self-employed drivers permanently from the scope of the Directive,
- having regard to the opinion of the European Economic and Social Committee on the communication from the Commission to the Council and the European Parliament - Keep Europe moving - sustainable mobility for our continent - mid-term review of the

¹ OJ L 370, 31.12.1985, p. 1.

² OJ L 80, 23.3.2002, p.35.

³ OJ L 102, 11.4.2006, p. 1.

⁴ OJ L 102, 11.4.2006, p. 35.

⁵ ECR, p. I-7789.

European Commission's 2001 transport White Paper¹,

- having regard to the letters of 21 June 2007 and 29 June 2007 from the Chairman of the Committee on Employment and Social Affairs to Commissioner Vladimir Spidla and Vice-President Jacques Barrot and the reply from Vice-President Barrot of 3 October 2007,
 - having regard to the report of the European Foundation for the Improvement of Living and Working Conditions on 'Impact of the working time directive on collective bargaining in the road transport sector'²,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Transport and Tourism (A6-0000/2008),
- A. whereas it is in the general interest that the rules on working time, driving time and rest periods for both mobile workers and self-employed drivers should be properly applied,
- B. whereas the aim of Directive 2002/15/EC is to establish minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of persons performing mobile road transport activities, to improve road safety and to align conditions of competition,
- C. whereas the directive came into force on 23 March 2002 and gave Member States three years, until 23 March 2005, to implement its provisions, but whereas most Member States have failed to transpose the directive during this three-year transitional period,
- D. whereas two years after the end of the transitional period for the transposal of Directive 2002/15/EC there are still some Member States which have not transposed all of its provisions,
- E. whereas self-employed drivers have been excluded from the scope of Directive 2002/15/EC on a temporary basis until 23 March 2009,
- F. whereas the Commission report on the consequences of excluding self-employed drivers from the scope of Directive 2002/15/EC sets out both the advantages and disadvantages of including or excluding self-employed drivers, but without reaching any final conclusions,
- G. whereas Parliament has pointed on various occasions to the importance of avoiding fragmentation of the industry as a result of the classifying of many employees (falsely) as self-employed drivers,
- H. whereas it is important to eliminate disparities between the Member States and help to ensure fair competition in the road transport sector by including self-employed drivers,

¹ OJ C 161, 13.7.2007, p. 89.

² <http://www.eurofound.europa.eu/docs/eiro/tn0704039s/tn0704039s.pdf>

- I. whereas it is important for the scope of the regulation to remain consistent with regard to the length of driving time and rest periods, with no distinctions between drivers,
 - J. whereas restricting working time in the road transport sector will have much greater benefits in terms of road safety if self-employed drivers are included,
 - K. whereas the inclusion of self-employed drivers will not detract from their capacity or the need to perform administrative or managerial duties for their company, since, for the purposes of the directive, working time is confined to activities related directly to road transport,
 - L. whereas the social actors represented on the European Economic and Social Committee are broadly in agreement on including self-employed workers, so as to ensure equal treatment for all workers in the sector, prevent distortions of competition and promote better working conditions,
 - M. whereas the European Court of Justice has clearly established the doctrine that Article 71 of the EC Treaty offers a sufficient legal basis for applying the directive to self-employed workers, precisely because it contributes to the objectives of road safety and the approximation of conditions of competition,
 - N. whereas the abovementioned Commission communication and report reflect the continuing concern at the delays in transposing and applying Directive 2002/15/EC in some Member States, as well as other social legislation in the road transport sector,
 - O. whereas, even though there are some Member States which have still not transposed Directive 2002/15/EC, the two-yearly implementation reports should be submitted in accordance with the timetable laid down in the directive,
- 1. Expresses concern at the shortcomings and delays in the transposal and implementation of Directive 2002/15/EC in some Member States;
 - 2. Calls on the Member States to show the utmost diligence in transposing social legislation in the road transport sector into national law and implement it, so as to properly comply with the general interests of road safety and the health and safety of drivers and provide a clear framework of fair competition;
 - 3. Calls on the Commission to draw up the implementation reports required under the abovementioned directive at the two-yearly intervals laid down, even though some Member States have not yet transposed the directive's provisions into national law;
 - 4. Calls on the Commission to display the utmost firmness in dealing with infringements of European law by Member States as regards social provisions in the road transport sector and to take preventive measures, if necessary via judicial process, to ensure strict compliance with Community law;
 - 5. Calls on the Commission to give priority to the social dimension of road safety and the health and safety of drivers ahead of all other considerations, when drawing up its official impact assessment;

6. Calls on the Commission, when drawing up its official impact assessment, to give proper consideration to the position expressed by Parliament and its arguments for the full inclusion of self-employed drivers within the scope of the Directive after the transitional period;
7. Calls on the Commission, when drawing up its official impact assessment, to take into account the general view within the transport sector that self-employed drivers should be included and the fact that it would be extremely difficult from a legal point of view to identify and pursue 'bogus' self-employed workers, not to mention the practical and bureaucratic difficulties that would have to be overcome to prevent this concept from being widely exploited to evade the restrictions on working days;
8. Calls on the Commission to submit the relevant measures sufficiently well in advance to ensure that the directive as a whole, including all its elements, can enter fully into force on 23 March 2009 and that its scope is extended to include self-employed workers;
9. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the European Economic and Social Committee and the Committee of the Regions.

EXPLANATORY STATEMENT

Road transport is one of the economic activities that plays a crucial role in Europe. It is a dynamic and expanding sector which is very important in terms of jobs, directly employing more than three million persons in the Union as a whole. Unfortunately, transposal of and compliance with social legislation in this sector at national level, and specifically the rules governing working time, driving hours and rest periods, leave much to be desired, with the threat this poses to road safety and the health and safety of drivers, as pointed out by Parliament.

Furthermore, the fierce competition within the sector and with other transport sectors means that clear rules and effective controls and sanctions are needed to ensure that failure to comply with common rules does not serve to undermine the principle of fair competition, which is vital to the orderly and rational functioning of the sector within the European economic area. Respect for fair competition and full compliance with the rules on driving, working time and rest periods are two sides of the same coin and are basic requirements for ensuring at one and the same time the road safety of European citizens and the health and safety of passenger and freight transport drivers.

In order to meet these important and difficult challenges, a substantial body of law has been established, although it is not always as clear and consistent as it should be and above all has not always been diligently transposed into national law and implemented in the transport sector by all Member States.

There are two blocks of legislation, which do not always run in parallel. The first is usually the domain of Parliament's Committee on Transport and Tourism and concerns driving hours and rest periods, an area in which new legislation has been adopted¹. The second concerns the organisation of the working time of persons performing mobile road transport activities (Directive 2002/15/CE of 11 March 2002), which is being dealt with by the Committee on Employment and is the main focus of this report.

The health and safety objectives pursued by Directive 2002/15/EC are plagued by two types of problem:

1. Firstly, the shortcomings in transposing the legislation into national law. The Member States had until 23 March 2005, three years after the entry into force of the directive, to implement its provisions. By that date, one third of the Member States had failed to do so and even now four of them have failed to submit transposal measures. As a result, the Commission considers that it is not in a position to publish its first two-yearly implementation report, which was due in March 2007.

¹ 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 (CEE) No 3820/85 (OJ L 102, 11.4. 2006, p. 1), and Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 112, 11.4. 2006, p. 35).

2. Secondly, there is still uncertainty surrounding the inclusion of self-employed drivers within the scope of the directive, as called for by Parliament. This is still not a reality and was only agreed after arduous conciliation with the Council. On 23 May 2007, the Commission published the report it was required to produce on the consequences of the exclusion of self-employed drivers from the scope of the Directive 2002/15/EC (COM(2007)266). The report was intended to clarify the scope of the legislative measures the Commission needs to propose to ensure that self-employed drivers can be included within its scope by 23 March 2009, as provided for in Article 2(1) of Directive 2002/15/EC. However, the Commission report concluded that it was not yet in a position to introduce the required proposal and that further impact assessment was required, taking into account other elements such as the new Regulation (EC) No 561/2006 on driving time and rest periods. Many have seen the report as an indication that the Commission is no longer supporting the inclusion of self-employed drivers as strongly as it did in the past, and that economic considerations are at odds with or taking precedence over social ones.

On 21 June 2007 and 29 October 2007, Chairman Jan Andersson sent an official communication to Commissioner Vladimir Spidla and Vice-President Jacques Barrot, on behalf of the Committee on Employment, expressing satisfaction that ‘the Commission continues to believe that a reduction in working time for the sector as a whole, including self-employed drivers, will have a positive impact on road safety’. The letter closed by pointing out that ‘it is important to remain consistent with the Regulation on driving time and rest periods, prevent fragmentation of the industry caused by the classification of many workers (falsely) as self-employed drivers, so as to ensure fair competition through implementation of the directive across the road transport sector’.

Vice-President Barrot replied to the letter and said that the available study had not reached a final conclusion on whether self-employed drivers should be included or excluded and that further examination of the question was needed. Accordingly, an official impact assessment study had been launched into three possible options:

- A. maintaining the directive as it stands, with full and automatic inclusion of self-employed drivers with effect from 23 March 2009;
- B. strengthening the directive through provisions to ensure that so-called ‘bogus self-employed drivers’ are included within the scope of the Directive, while genuine self-employed drivers are excluded;
- C. extending the scope of the Directive to all self-employed drivers except for those engaged solely in national transport activities.

In view of the time which has elapsed, Parliament needs to give its views with the dual aim of ensuring that the directive is fully in force across Europe before the end of the current term of office and that the Commission bears in mind that Parliament advocated firm support for the inclusion of all workers in the sector within the organisation of working time, as the only way of effectively and simultaneously safeguarding:

- road safety
- health and safety of drivers
- fair competition within the sector and across the common European area.