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DRAFT REPORT


Committee on Employment and Social Affairs

Rapporteur: Edit Bauer
Symbols for procedures

* Consultation procedure
  majority of the votes cast

**I Cooperation procedure (first reading)
  majority of the votes cast

**II Cooperation procedure (second reading)
  majority of the votes cast, to approve the common position
  majority of Parliament’s component Members, to reject or amend
  the common position

*** Assent procedure
  majority of Parliament’s component Members except in cases
  covered by Articles 105, 107, 161 and 300 of the EC Treaty and
  Article 7 of the EU Treaty

***I Codecision procedure (first reading)
  majority of the votes cast

***II Codecision procedure (second reading)
  majority of the votes cast, to approve the common position
  majority of Parliament’s component Members, to reject or amend
  the common position

***III Codecision procedure (third reading)
  majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the
Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in **bold italics**. In
the case of amending acts, passages in an existing provision that the
Commission has left unchanged, but that Parliament wishes to amend, are
highlighted in **bold**. Any deletions that Parliament wishes to make in
passages of this kind are indicated thus: [...]. Highlighting in **normal italics** is
an indication for the relevant departments showing parts of the legislative
text for which a correction is proposed, to assist preparation of the final text
(for instance, obvious errors or omissions in a given language version).
Suggested corrections of this kind are subject to the agreement of the
departments concerned.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0650),

– having regard to Article 251(2), and Article 71 and Article 137(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0354/2008),

– having regard to Rule 55 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 (A7-0000/2009),

1. Rejects the Commission proposal;

2. Calls on the Commission to withdraw its proposal and take appropriate steps together with Parliament to submit a new proposal;

3. Instructs its President to forward its position to the Council and the Commission.
EXPLANATORY STATEMENT


In accordance with Directive 2002/15/EC and in particular the provision that it would apply to self-employed drivers from 23 March 2009, the Commission submitted to the European Parliament and the Council a report (COM (2007) 266 final) presenting the likely consequences of the inclusion or exclusion of self-employed drivers from the scope of the directive. The report also assesses the consequences of implementing its night-time provisions. Furthermore, it investigates the more general effects of the implementation of the directive on road safety, the conditions of competition, the structure of the profession and social aspects.

It found that:

(a) There was not a decisive case for including self-employed drivers in the scope of the directive.
(b) The distinction between self-employed drivers and mobile workers was unclear, and this increased the risk of the phenomenon of ‘false’ self-employed drivers, who, in order not to fall within the scope of the Directive, are not tied to an employer by an employment contract, but do not have the freedom to have relations with several customers.
(c) As regards night work, the Commission concluded that the provisions did not need to be amended or further harmonised; the definition of ‘night work’ (Article 3(i) of Directive 2002/15/EC) must merely be amended, since, as it is worded now, it would include even very short periods of night work, including periods of a few minutes only.

According to the Commission, this proposal is economically and socially disproportionate and unnecessary.


After stakeholder consultations and an impact assessment with a view to avoiding unnecessary administrative burden and at the same time promoting the EU transport policy objectives, the proposal under review amending Directive 2002/15/EC was considered the best policy option. According to the Commission, there has been no change in the overall purpose of the directive, namely protection of the health and safety of road transport workers, while distortions in competition and administrative and economic costs for Member States are
reduced.

**Proposals:**

(a) **Clarification of scope**

- Exclusion of genuinely self-employed mobile workers (deletion of Article 3(e));
- Application of directive to all mobile workers and those who are not free to organise their working activities, namely the ‘false’ self-employed drivers (Article 2, paragraph 1, Article 3, paragraph (d));
- Deletion of the definition of ‘working time’ for self-employed drivers and a more precise definition of ‘mobile workers’ is added.

(b) **Night work** (Article 3, (i))

- A definition of night work is proposed which, according to the Commission, is applicable in practice: two hours as the minimum period of night work is reinserted.

(c) **Application**

- Article 11(a) (new) introduces common principles designed to ensure greater transparency and effectiveness of national enforcement regimes.
- Closer cooperation is called for between Member States’ enforcement authorities.
- Commission support is also proposed to facilitate the dialogue between the bodies concerned.

**III. Position of European Parliament**

- Apart from structural updating measures, your rapporteur recognises a danger that the phenomenon of ‘false’ self-employed mobile workers will arise owing to differing interpretations of Directive 2002/15/EC.
- Your rapporteur defines relations between ‘false’ self-employed workers and customers as commercial.
- She combines a definition of night work and compensation for overall working hours and does not accept the definition of two hours as the minimum period of night work, as provided for in Article 7(1), which provides that drivers performing night work may not work more than ten hours per 24 hour period.
- She takes the view that the establishment of systems of exchange of information are disproportionate compared to the objectives of the directive.
- She calls for the facilitation and improvement of access to information concerning social legislation in the field of road transport.