Amendment 30
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Report **A7-0137/2010**
Edit Bauer
The organisation of the working time of persons performing mobile road transport activities
COM(2008)0650 – C6-0354/2008 – 2008/0195(COD)

Proposal for a directive – amending act
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POSITION OF THE EUROPEAN PARLIAMENT
AT FIRST READING*

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ***on the Functioning of the European Union***, and in particular ***Article 91*** and ***Article 153(2)*** thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the European Economic and Social Committee[1],
After consulting the Committee of the Regions,
Acting in accordance with the ***ordinary legislative*** procedure~~;~~
Whereas:

(1) Council Regulation (EC) No 561/2006 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) 2135/98 and repealing Council Regulation (EEC) No

* Amendments: new or amended text is highlighted in ***bold italics***; deletions are indicated by the symbol ▌.

1 OJ C228, 22.9.2009, p. 78.

3820/85[1] lays down common driving times, breaks and rest periods for drivers. That Regulation does not cover other aspects of working time for the road transport sector.

(2) 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[2] establishes 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.

(3) Article 2(1) of Directive 2002/15/EC requires the Commission to report on the exclusion of self-employed drivers from the scope of the Directive and to make a proposal on the basis of that report.

(4) The Commission report on the consequences of the exclusion of self employed drivers from the scope of the Directive 2002/15/EC and on the consequences of the night-time provisions was presented to the European Parliament and the Council in May 2007.

(4a) The European Parliament and the Council are aware of the existence of what must be understood to be false declarations of self-employment on the relevant labour market, that negatively affects the conditions of competition and exacerbates the phenomenon of undeclared employment throughout the Union. It is therefore necessary to deal with this phenomenon at national and EU level.

(4b) The Commission and the Member States should consider the possibility of exchanging and scrutinising the best practice of Member States on how to identify and eliminate such false declarations of self-employment.

(4c) Self-employed drivers, according to Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC[3], have to fulfil a whole set of requirements in order to be able to run their businesses.

(5) The experience with the transposition of Directive 2002/15/EC, stakeholder consultations, several studies and the impact assessment carried out revealed problems with the practice of implementing working time rules uniformly, low compliance levels and weak enforcement regimes in Member States.

(6) As a consequence of differences in the interpretation, application and enforcement of the provisions of Directive 2002/15/EC by the Member States and of a failure to adhere to the minimum working time standards by transport companies and drivers, competition is distorted, and the safety and health of drivers is jeopardised.

(7) In the light of the Commission report and the impact assessment, self-employed drivers should be excluded from the scope of Directive 2002/15/EC. ***However, this***

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[1] OJ L 102, 11.4.2006, p. 1.
[2] OJ L 80, 23.3.2002, p. 35.
[3] ***OJ L 300, 14.11.2009, p. 51.***

should be without prejudice to the right of Member States to apply the provisions of this Directive to such drivers established on their territories.

(7a) Self-employed entrepreneurs are not as yet subject to working time restrictions in any other sector. One of their hallmarks is freedom to choose their working hours within the limits of national law. This freedom should be upheld in all sectors.

(8) Nevertheless, it is desirable that Member States continue to alert self-employed drivers to the adverse effects on health and safety as well as of negative effects on road safety caused by excessively long working hours, inadequate rest or disruptive working patterns.

(8a) All persons performing mobile road transport activities, be they mobile workers or self-employed drivers, are covered equally by Regulation (EC) No 561/2006 as regards driving times, breaks and rest periods and are subject to the same enforcement regime of these rules established by 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[1]. It is in the general interest that those rules on driving times and rest periods for all drivers be properly applied and their application efficiently controlled.

(8b) Moreover, this Directive is without prejudice to Article 6(5) of Regulation (EC) No 561/2006, according to which all drivers, including self-employed drivers, must record manually in the tachograph all their activities defined as working time in Directive 2002/15/EC, except driving, which is recorded automatically. This Directive is without prejudice to the obligations on Member States under that Regulation (EC) No 561/2006 to ensure by means of effective controls that the recording obligation provided for therein is properly applied.

(9) It is therefore necessary to make certain technical adjustments to the text of Directive 2002/15/EC.

(10) The ***Union*** legislation is only efficient and effective if it is ***properly*** implemented by all Member States, applied equally to all actors concerned and controlled on a regular basis and in an efficient manner ***and that penalties are imposed for infringements in an effective, proportionate and dissuasive manner in accordance with the established procedure in Member States***.

(11) Monitoring compliance is a complex task with multiple actors and *it* therefore requires cooperation between Member States and the Commission, as well as between Member States themselves. ***The contribution of the social partners with regard to monitoring compliance and enforcement should not be disregarded.***

(11a) The Member States should ensure active and substantial participation by the social partners in monitoring the application of this Directive.

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[1] ***OJ L 102, 11.4.2006, p. 35.***

(12) It is therefore appropriate to adapt Directive 2002/15/EC in order to ***effectively*** remedy shortcomings in the implementation, application and enforcement of the rules by clarifying its scope, reinforcing administrative cooperation among Member States and promoting the exchange of information and ***best*** practice.

(13) The objective of this Directive, namely the modernisation of ***Union*** law on the organisation of working time and enhancing its enforceability, cannot be sufficiently achieved by Member States and can, therefore, be better achieved at ***Union*** level; the ***Union*** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ***on the European Union***. In accordance with the principle of proportionality, as set out in that Article, *this* Directive does not go beyond what is necessary in order to achieve that objective.

(14) This Directive respects fundamental rights and observes the principles specifically recognised in particular by the Charter of Fundamental Rights of the European Union. In particular it seeks to ensure the right of every worker to working conditions which respect his or her health and safety as well as the right to limitation of maximum working hours and to daily and weekly rest periods (Article 31 of the Charter of Fundamental Rights of the European Union).

(15) Directive 2002/15/EC should therefore be amended accordingly.

(15a) In accordance with point 34 of the Interinstitutional Agreement on better law-making[1], Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and their transposition measures, and to make those tables public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2002/15/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The Directive shall apply to mobile workers ***working for*** undertakings established in a Member State and participating in road transport activities covered by Regulation (EC) No 561/2006 or, failing that, by the AETR Agreement.

Those drivers who cannot be considered as self-employed drivers, as defined in Article 3(e) of this Directive, shall be subject to the same obligations and benefit from the same rights as those laid down for mobile workers in this Directive."

(b) in paragraphs 2 and 3 the reference "Directive 93/104/EC" is replaced by the reference "Directive 2003/88/EC".

[1] OJ C 321, 31.12.2003, p. 1.

(c) in paragraph 4 the reference "Regulation (EEC) No 3820/85" is replaced by the reference "Regulation (EC) No 561/2006".

(2) Article 3 is amended as follows

(a) the first sentence of point 2 of point (a) is deleted.

▌

(c) point (e) is ***replaced by the following***:

"(e) 'self-employed driver' shall mean anyone: whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Union legislation under cover of a Union licence or any other professional authorisation to carry out the aforementioned transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of hierarchical working relationship, who has the freedom to organise the relevant working activities without the client's direct supervision, whose income depends directly on the profits made, who does not receive any employment rights such as periodic payment of remuneration, payment in kind, recognition of entitlements such as paid annual leave from another user undertaking or contracting party and who has the freedom to, individually or through a joint operation between self-employed drivers, have commercial relationships with several customers."

(d) point (f) is replaced by the following:

"(f) 'person performing mobile road transport activities' shall mean any mobile worker who performs such activities;"

(e) point (i) is replaced by the following:

"(i) 'night work' shall mean work during a period of work which includes at least two hours work performed during night time."

(3) In Article 4(a) the reference "the fourth and fifth subparagraphs of Article 6(1) of Regulation (EEC) No 3820/85 or, where necessary, the fourth subparagraph of Article 6(1) of the AETR agreement" is replaced by the reference "Regulation (EC) No 561/2006 or, where necessary, the AETR Agreement".

(4) In Article 5(1) the reference "Regulation (EEC) No 3820/85" is replaced by the reference "Regulation (EC) No 561/2006".

(5) In Article 6 the reference "Regulation (EEC) No 3820/85" is replaced by the reference "Regulation (EC) No 561/2006".

(6) The following Article 11a is inserted:

'Article 11a

Enforcement

1. Member States shall organise ▌ appropriate***, non-discriminatory, regular*** monitoring and controls ***including multi-agency cooperation*** in order to guarantee the correct and consistent ***transposition and*** implementation of the rules contained in this Directive. They shall ***furthermore*** ensure that the ▌ bodies ***in the Member States*** responsible for enforcement of the Directive have ▌ qualified inspectors and shall take whatever measures are appropriate***.***
Member States shall carry out regular controls with a view to verifying the correct application of this Directive in respect of self-employed drivers.

2. Member States shall communicate to the Commission details of the monitoring and controls arrangements set up***, in accordance with the provisions referred to in Article 13***.

3. Member States shall ***after consulting with the social partners as appropriate***, take the necessary measures to ensure that transport undertakings and mobile workers have access to information, assistance and advice in the field of working time rules and work organisation.

4. With a view to ensuring the effective, efficient and uniform implementation of the Directive throughout the Community, the Commission shall support dialogue between Member States with the following aims:

(a) to reinforce administrative cooperation between their competent authorities, through the adoption of effective ***measures for the*** exchange of information, the improvement of access to information and the promotion of exchange of information and ***best practice*** in the enforcement of working time rules;

(b) to promote a common approach to the implementation of this Directive;

(c) to facilitate dialogue between the transport sector and enforcement authorities."

(8) In Article 13 the reference "Article 16(2) Regulation (EEC) No 3820/85" is replaced by the reference "Article 17(1) of Regulation (EC) No 561/2006".

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by […] 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 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 twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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