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REPORT

on the proposal for a 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
(COM(2008)0650 – C6-0354/2008 – 2008/0195(COD))

Committee on Employment and Social Affairs

Rapporteur: Marie Panayotopoulos-Cassiotou

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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.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	6
OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM.....	8
PROCEDURE.....	16

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities (COM(2008)0650 – C6-0354/2008 – 2008/0195(COD))

(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 Articles 71 and 137(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0354/2008),
 - having regard to Rule 51 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 (A6-0120/2009),
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 Commission.

EXPLANATORY STATEMENT

(i) Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities

Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002, which entered into effect on 23 March 2005, was an important step towards improving health and safety protection of mobile workers in the road transport sector. It is a *lex specialis* to the general Working Time Directive 2003/88/EC and supplements Regulation (EC) No. 561/2006 (OJ E 102, 11.4.2006) laying down common rules on driving times and rest periods for drivers.

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.

(II) Proposal for a 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 (COM(2008)650).

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.

17.2.2009

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

for the Committee on Employment and Social Affairs

on the proposal for a 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
(COM(2008)0650 – C6-0354/2008 – 2008/0195(COD))

Rapporteur: Johannes Blokland

SHORT JUSTIFICATION

The Commission proposal

Directive 2002/15/EC regulates the working hours of people performing mobile road transport activities. It primarily concerns mobile workers employed by undertakings, but from 23 March 2009 will also concern self-employed drivers, who are entrepreneurs in their own right, unless it is decided before that date to exclude the latter category from the scope of the Directive. The provisions concerning working hours contained in this Directive are additional to the provisions concerning driving hours and rest periods of mobile road transport workers laid down in Regulation 561/1006 (previously 3820/85).

The distinction between mobile workers and self-employed drivers has caused problems in practice, because of the emergence of 'false' self-employed drivers. These are people who are formally registered as self-employed entrepreneurs and operate as self-employed drivers but *de facto* work for only one other undertaking. In reality they function as if they were employees of this other undertaking.

In order to solve this problem, the Commission proposes in its proposal COM(2008)0650 that the definition of 'mobile worker' be amended so as in future also to include 'false' self-employed drivers, so that they would likewise have to comply with the provisions concerning working hours. The Commission concludes that it is not worthwhile also to include genuinely self-employed drivers within the scope of the Directive. They are self-employed entrepreneurs who are free to decide on their working hours. 'False' self-employed drivers are to be brought within the scope of the Directive by including in the definition of 'mobile workers' persons who are not formally tied to an employer but *de facto*:

- who do not have the freedom to organise their work, or
- whose income does not depend directly on the profits made, or
- who cannot work with several customers.

Secondly, the Commission proposes interpreting the term 'night work' more broadly. Pursuant to Directive 2002/15, 'night' means a period of at least four hours as defined in national legislation which lies between 00.00 and 07.00. 'Night work' is currently defined as any work, however brief or however long its duration, during that period. The Commission now proposes that work be defined as night work only if actual work has been performed for at least two hours during that period.

Thirdly, the Commission proposes inserting a new article on enforcement. Here it should be borne in mind that enforcement of working hours regulations is carried out in the country of establishment by the competent inspectorate based there. Working hours will therefore not be monitored as part of roadside inspections, which may also be performed in other Member States, but only in the country of establishment.

Rapporteur's standpoint and amendments

By and large, your rapporteur endorses the Commission proposal. It is a positive development for 'false' self-employed drivers to be treated as employees with restrictions on their working hours, as they are also *de facto* working as employees for another undertaking. Your rapporteur also supports the Commission's view that genuinely self-employed drivers should not fall under this Directive. It is therefore right that the Commission proposal amends Article 2(1) to this effect.

Nonetheless, your rapporteur deeply deplores the fact that this Commission proposal has been published so late. Even if the European Parliament and the Council were to reach agreement in the course of a rapid first reading, the amended Directive could not enter into force before 23 March 2009. Pending the entry into force of the amended Directive, your rapporteur calls upon the Member States to continue implementation in the spirit of the existing Directive after 23 March 2009 until the amended Directive enters into force.

With regard to night work, your rapporteur agrees with the Commission that greater flexibility is required than permitted by the existing Directive. It ought to be possible to exceed limits by a few minutes and even up to two hours. However, your rapporteur does consider that the definition of 'night time' should therefore be amended. As the Directive currently stands, it need be no longer than four hours, which means that with an overrun of two hours it may *de facto* be reduced to two hours. This is too short a period for a proper night's sleep. Your rapporteur therefore proposes defining 'night time' as a fixed period between 00.00 and 06.00.

Your rapporteur supports the insertion of an article concerning enforcement, as proposed by the Commission. In order to encourage Member States to carry out this enforcement genuinely and without discrimination, he proposes that this new Article 11a be tightened up.

Lastly, your rapporteur considers that, in the interests of a balanced distribution of working hours and rest periods over the week, it would be desirable to amend the definition of 'week'. In order to create a fixed rest period which will be of benefit to the quality of work, road safety and public well-being, the greater part of Sunday should be excluded from this

definition.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Mobile workers who do not fall under the scope of application of Regulation (EC) No 561/2006 should fall within the scope of application of this Directive.

Justification

The fact that some mobile workers do not fall under the scope of application of the driving time and rest period Regulation 561/2006/EC and also not under the scope of application of the working time Directive leads on the one hand to a distortion of competition and on the other hand to an impairment of the road safety.

Amendment 2

Proposal for a directive – amending act Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) In keeping with the general principles of Community law, the Member States should ensure that the penalties imposed for non-compliance with this Directive are appropriate, effective, proportionate and dissuasive.

Amendment 3

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 2002/15/EC

Article 3 – point d

Text proposed by the Commission

Amendment

"mobile worker' shall also include any person who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, but:

deleted

i who does not have the freedom to organise the relevant working activities;

ii whose income does not depend directly on the profits made;

iii who does not have the freedom, individually or through a cooperation between self-employed drivers, to have relations with several customers."

Justification

The problem of the "false" self-employed drivers is a matter that is already controlled by the Member States, there is no need for a regulation on European level.

Amendment 4

Proposal for a directive – amending act

Article 1 – point 2 – point b a (new)

Directive 2002/15/EC

Article 3 – point d – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall in general take account of all relevant information. Thus persons recognised as self-employed under other national and/or EU legislation (in relation to issues such as taxation, social legislation) shall not be regarded as a mobile worker under this Directive.

Justification

The criteria for determining if an operator is a mobile worker or a self-employed, must be flexible to ensure that entrepreneurs remain interested in taking initiatives and develop new businesses. Operators already recognised by other national and EU legislation as independent must remain so also under this directive.

Amendment 5

Proposal for a directive – amending act

Article 1 – point 2 – point d a (new)

Directive 2002/15/EC

Article 3 – point g

Text proposed by the Commission

Amendment

(da) point (g) is amended as follows:

(g) 'week' shall mean the period between 00.00 hours on Monday and 24.00 hours on Sunday; nevertheless, this definition shall be without prejudice to national legislation which recognises Sunday as the weekly non-working day with the result that there is a traffic ban;

Amendment 6

Proposal for a directive – amending act

Article 1 – point 2 – point d b (new)

Directive 2002/15/EC

Article 3 – point h

Text proposed by the Commission

Amendment

(db) point (h) is amended as follows:

(h) 'night time' shall mean the period between 00.00 hours and 06.00 hours;

Justification

As it stands, the proposal would allow Member States de facto to reduce night time to two hours. This would leave too short a time for a night's sleep. The flexibility proposed in point (h) is acceptable only if accompanied by a clear and reasonable definition of 'night time'. In addition, this amendment will eliminate the confusion which currently exists between Member States regarding night time.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 2 – point e

Directive 2002/15/EC

Article 3 – point i

Text proposed by the Commission

Amendment

This amendment does not apply to the EN version

Amendment 8

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/15/EC

Article 11 a – paragraph 1

Text proposed by the Commission

Amendment

(1) Member States shall organise a system of appropriate and regular monitoring and controls in order to guarantee the correct and consistent implementation of the rules contained in this Directive. They shall ensure that the national bodies responsible for enforcement of the Directive have an adequate number of qualified inspectors and shall take whatever measures are appropriate.

(1) Member States shall organise a system of appropriate, ***non-discriminatory*** and regular monitoring and controls in order to guarantee the correct and consistent implementation of the rules contained in this Directive. They shall ensure that the national bodies responsible for enforcement of the Directive have an adequate number of qualified inspectors and shall take whatever measures are appropriate.

Justification

It is necessary to protect undertakings against discriminatory treatment.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/15/EC

Article 11 a – paragraph 1

Text proposed by the Commission

(1) Member States shall organise a system of appropriate and regular monitoring and controls in order to guarantee the correct and consistent implementation of the rules contained in this Directive. They shall ensure that the national bodies responsible for enforcement of the Directive have an adequate number of qualified inspectors and shall take whatever measures are appropriate.

Amendment

(1) Member States shall organise a system of appropriate and regular monitoring and controls in order to guarantee the correct and consistent implementation of the rules contained in this Directive. ***If the rules on driving hours and rest periods laid down in Regulation (EC) No 561/2006 are violated to such an extent that the rules on working hours are likewise violated, Member States shall without fail monitor and enforce the rules on working hours.*** They shall ***furthermore*** ensure that the national bodies responsible for enforcement of the Directive have an adequate number of qualified inspectors and shall take whatever measures are appropriate.

Justification

At present there is no link between the enforcement of driving hours and rest periods and enforcement of working hours, although the two are logically related. Your rapporteur considers that working hours should certainly be monitored and enforced (but not only) if a violation of the rules on driving hours and rest periods involving a relatively long excess driving period also automatically means that the rules on working hours are violated.

PROCEDURE

Title	The organisation of the working time of persons performing mobile road transport activities
References	COM(2008)0650 – C6-0354/2008 – 2008/0195(COD)
Committee responsible	EMPL
Opinion by Date announced in plenary	TRAN 21.10.2008
Drafts(wo)man Date appointed	Johannes Blokland 4.11.2008
Discussed in committee	21.1.2009 16.2.2009
Date adopted	17.2.2009
Result of final vote	+ : 21 - : 20 0 : 0
Members present for the final vote	Gabriele Albertini, Inés Ayala Sender, Etelka Barsi-Pataky, Paolo Costa, Michael Cramer, Luis de Grandes Pascual, Arūnas Degutis, Petr Duchoň, Saïd El Khadraoui, Emanuel Jardim Fernandes, Francesco Ferrari, Georg Jarzembowski, Stanisław Jałowiecki, Timothy Kirkhope, Jaromír Kohlíček, Sepp Kusstatscher, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Marian-Jean Marinescu, Erik Meijer, Josu Ortuondo Larrea, Reinhard Rack, Ulrike Rodust, Luca Romagnoli, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Michel Teychenné, Silvia-Adriana Țicău
Substitute(s) present for the final vote	Zsolt László Becsey, Johannes Blokland, Philip Bradbourn, Luigi Cocilovo, Jas Gawronski, Pedro Guerreiro, Lily Jacobs, Rosa Miguélez Ramos, Dominique Vlasto, Corien Wortmann-Kool

PROCEDURE

Title	The organisation of the working time of persons performing mobile road transport activities		
References	COM(2008)0650 – C6-0354/2008 – 2008/0195(COD)		
Date submitted to Parliament	15.10.2008		
Committee responsible Date announced in plenary	EMPL 21.10.2008		
Committee(s) asked for opinion(s) Date announced in plenary	TRAN 21.10.2008		
Rapporteur(s) Date appointed	Marie Panayotopoulos-Cassiotou 2.12.2008		
Discussed in committee	21.1.2009	11.2.2009	2.3.2009
Date adopted	2.3.2009		
Result of final vote	+: 23 -: 17 0: 0		
Members present for the final vote	Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnach, Alejandro Cercas, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Richard Falbr, Joel Hasse Ferreira, Roger Helmer, Karin Jöns, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Rovana Plumb, Bilyana Ilieva Raeva, Elisabeth Schroedter, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer		
Substitute(s) present for the final vote	Herbert Bösch, Maddalena Calia, Françoise Castex, Anna Ibrisagic, Rumiana Jeleva, Sepp Kusstatscher, Jamila Madeira, Viktória Mohácsi, Ljudmila Novak, Gianluca Susta, Silvia-Adriana Țicău, Georgios Toussas		
Substitute(s) under Rule 178(2) present for the final vote	Glenn Bedingfield, Herbert Bösch, Maddalena Calia, Ljudmila Novak, Gianluca Susta, Silvia-Adriana Țicău		