

A7-0137/2010

5.5.2010

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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: 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

**on the proposal for a directive of the European Parliament and of the Council on 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))**

(Ordinary legislative 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 (C6-0354/2009),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(3) and Articles 91 and 153(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A7-0137/2010),
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 and to the national parliaments.

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 workers is a general problem of the labour market and should be addressed as such.
- Your rapporteur is convinced that regulation of working time of self-employed is unprecedented and the legislation in this direction would have far-reaching consequences.
- 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.

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 19.10.2009			
Committee(s) asked for opinion(s) Date announced in plenary	TRAN 19.10.2009			
Rapporteur(s) Date appointed	Edit Bauer 21.7.2009			
Discussed in committee	2.9.2009	1.12.2009	27.1.2010	22.2.2010
	17.3.2010			
Date adopted	28.4.2010			
Result of final vote	+: –: 0:	30 18 0		
Members present for the final vote	Regina Bastos, Edit Bauer, Jean-Luc Bennahmias, Pervenche Berès, Mara Bizzotto, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Sergio Gaetano Cofferati, Frédéric Daerden, Proinsias De Rossa, Sari Essayah, Pascale Gruny, Thomas Händel, Marian Harkin, Roger Helmer, Stephen Hughes, Liisa Jaakonsaari, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Veronica Lope Fontagné, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Csaba Öry, Siiri Oviir, Rovana Plumb, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Jutta Steinruck, Traian Ungureanu			
Substitute(s) present for the final vote	Raffaele Baldassarre, Filiz Hakaeva Hyusmenova, Gesine Meissner, Ria Oomen-Ruijten, Evelyn Regner, Csaba Sógor, Claude Turmes, Emilie Turunen, Gabriele Zimmer			
Substitute(s) under Rule 187(2) present for the final vote	Martin Callanan, Philip Claeys, Derk Jan Eppink, João Ferreira			