

# EUROPEAN PARLIAMENT

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*Committee on Transport and Tourism*

**2008/0195(COD)**

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

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## 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

(1) Member States shall organise a system of appropriate, ***non-discriminatory*** and regular monitoring and controls in order to guarantee the correct and consistent

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.

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

<b>Title</b>	The organisation of the working time of persons performing mobile road transport activities	
<b>References</b>	COM(2008)0650 – C6-0354/2008 – 2008/0195(COD)	
<b>Committee responsible</b>	EMPL	
<b>Opinion by</b> Date announced in plenary	TRAN 21.10.2008	
<b>Drafts(wo)man</b> Date appointed	Johannes Blokland 4.11.2008	
<b>Discussed in committee</b>	21.1.2009	16.2.2009
<b>Date adopted</b>	17.2.2009	
<b>Result of final vote</b>	+: 21 –: 20 0: 0	
<b>Members present for the final vote</b>	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	
<b>Substitute(s) present for the final vote</b>	Zsolt László Becsey, Johannes Blokland, Philip Bradbourn, Luigi Cocilovo, Jas Gawronski, Pedro Guerreiro, Lily Jacobs, Rosa Miguélez Ramos, Dominique Vlasto, Corien Wortmann-Kool	