

Opinion of the European Economic and Social Committee 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

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(2009/C 228/14)

On 6 November 2008 the Council decided to consult the European Economic and Social Committee, under Articles 71 and 137(2) of the Treaty establishing the European Community, 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'

On 2 December 2008, the Committee Bureau charged the Section for Transport, Energy, Infrastructure and the Information Society with preparing the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee designated Mr MORDANT as rapporteur-general at its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March 2009) and adopted the following opinion by 93 votes to 7, with 7 abstentions.

1. Conclusions and recommendations

1.1 The EESC considers that the Commission proposal is difficult to implement, and that it will give rise to enormous additional costs and an increased administrative burden. Furthermore, it fails to fulfil one of the key objectives of Directive 2002/15/EC establishing 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. The fact is, a mobile worker cannot work more than 48 hours per week (on average) whilst complying with Regulation 561/2006 on driving time and rest periods, whereas a self-employed driver can work up to 86 hours per week and still comply with that same Regulation 561/2006 on driving time and rest periods.

1.2 Road transport in Europe is expected to grow by about 50 % over the next 20 years, regardless of growth in other means of transport (rail and water). The EESC points out that it is not the status of the driver that will determine whether the objectives of the directive are achieved, but the conditions in which he is to carry out mobile transport activities.

1.3 In this opinion, the EESC reiterates the broad thrust of the conclusions of the EESC opinion on *Road transport – working time of self-employed drivers*⁽¹⁾.

In that opinion, the Committee stated:

— The need to include all self-employed drivers within the scope of Directive 2002/15/EC, as provided for in Article 2 thereof (from March 2009) so as to promote road safety, foster fair competition and improve the working conditions of mobile and self-employed workers – and particularly their physical and mental health.

— The importance of the Member States transposing the directive correctly, particularly the definition of self-employed driver, and the co-liability of the different players in the transport chain, as is the case in the regulation on driving time and rest periods.

1.4 The EESC considers that the aims of the directive can only be achieved by applying minimum social protection standards in the road transport sector to everyone carrying out mobile transport activities, regardless of their status.

1.5 The Committee believes that the inclusion of self-employed drivers in the scope of the directive must happen in a way that keeps red tape to a minimum. A definition of working time for self-employed drivers requires that general administrative tasks should not be counted as working time.

1.6 Including self-employed drivers requires the adoption of a number of measures aimed at ensuring the implementation of and compliance with Directive 2002/15.

2. Introduction

2.1 Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 entered into force on 23 March 2005. It deals with the organisation of the working time of persons performing mobile road transport activities. The new common rules it established set minimum social protection standards for the workers in question. These minimum standards are considered to be a significant step forward, firstly in terms of greater protection of the health and safety of workers carrying out mobile road transport activities, and secondly in terms of improving road safety and ensuring fair competition.

⁽¹⁾ OJ C 27, 3.2.2009, pp. 49-51.

2.2 This directive, which seeks to protect mobile workers from adverse effects caused by excessively long working hours, inadequate rest or disruptive working patterns, is a special section of the general Working Time Directive (2003/88/EC). It supplements Regulation (EC) No 561/2006 of 15 March 2006 laying down common rules on driving times and rest periods for drivers.

2.3 When adopting the Directive after a conciliation procedure, Council and Parliament agreed that it should in principle apply to self-employed drivers from 23 March 2009 and that the Commission was to present a report to the European Parliament and the Council two years before that date, and ultimately that the Commission would put forward a legislative proposal based on the report, setting out the arrangements either for including self-employed workers or for excluding them from the scope of the directive.

3. Commission proposal

3.1 The Commission proposes to amend Directive 2002/15/EC by excluding self-employed drivers from its scope and to clarify the scope of the directive, which will apply to all mobile workers, including the so called 'false' self-employed drivers, i.e. those drivers who are officially self-employed, but in fact are not free to organise their working activities.

3.2 The Commission also seeks to define what a 'false' self-employed driver is: "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:

- a) who does not have the freedom to organise the relevant working activities;
- b) whose income does not depend directly on the profits made;
- c) who does not have the freedom, individually or through a cooperation between self-employed drivers, to have relations with several customers.'

3.3 The Commission proposes to add a condition for any work performed at night. In Directive 2002/15, any work carried out at night is deemed to be night work. In its proposed amendment, the Commission proposes that there should be a period of work which includes at least two hours work performed during night time.

3.4 The proposed amendment also inserts a new article on enforcement so as to ensure the proper and consistent application of the rules set out in Directive 2002/15, stipulating that the national bodies responsible for enforcement of the Directive shall have an adequate number of qualified inspectors and shall take whatever measures are appropriate.

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

- a) reinforcing administrative cooperation between their competent authorities;
- b) promoting a common approach;
- c) facilitating dialogue between the transport sector and enforcement authorities.

4. General comments

4.1 Concerning the problems identified in the impact assessment, the Commission considers that 'road safety concerns due to driver's fatigue are prevented by strict enforcement of driving time and rest period rules that apply to all drivers, regardless of their employment status. Therefore the additional effect of the Working Time Directive is not significant for road safety.' In the conclusion of the impact assessment document, the Commission favours the option of excluding self-employed drivers but including the 'false' self-employed whilst ensuring more effective enforcement. This will reduce distortion of competition and enable better social protection of workers and assimilated groups.

4.2 The exclusion of self-employed workers from the scope of the directive has, according to a number of stakeholders, distorted competition in the road haulage industry. This recently led the Committee to make the following request in its opinion on the mid-term review of the transport White Paper (TEN/257 - rapporteur: Mr Barbadillo Lopez) ⁽¹⁾:

The social legislation covering road transport must preserve equal treatment for workers, whether they are employees or self-employed and, therefore, Directive 15/2002 of 11 March 2002, on the organisation of working time of persons performing mobile road transport activities must apply immediately to self-employed workers, without a transitional period, since the aim of this Directive is to ensure road safety, to avoid distortion of competition and to promote better working conditions.' (point 4.3.1.2)

4.3 Given the 50 % increase in road traffic expected in Europe over the next 20 years – regardless of other means of transport (rail and water), the physical and mental health of drivers of vehicles from 3.5 tonnes to 60 tonnes, road safety and fair competition can only be achieved by setting clear minimum social protection standards in the road transport sector that apply equally to everyone carrying out mobile transport activities, regardless of their status. The EESC believes that it is not status that should be the determining factor, but the act of carrying out mobile transport activities.

⁽¹⁾ OJ C 161, 13.7.2007, p. 89.

4.4 In its opinion (TEN/326) on *Road transport – working time of self-employed drivers*, the EESC expressed serious doubts as to the conclusions set out in the study and the related impact assessment concerning road safety, conditions for competition and social aspects.

The EESC also pointed out that 'excessive working hours are a major contributory factor to fatigue and hence to falling asleep at the wheel'.

Finally, in that opinion, the EESC stated that 'A level playing field is achieved when the prices paid to sub-contractors by the major companies organising all aspects of the distribution and transport of goods respect the social legislation concerning the industry, for mobile workers as well as self-employed drivers'.

4.5 It is not true, as the report on the impact analysis claims, that the Working Time Directive is not significant for road safety. The fact is, a mobile worker cannot work more than 48 hours (on average) whilst complying with Regulation 561/2006 on driving time and rest periods, whereas a self-employed driver can work up to 86 hours every week and still comply with Regulation 561/2006 on driving time and rest periods.

4.6 In the Commission proposal, when a driver is found to be a 'false' self-employed person, that driver is required to comply with the Working Time Directive. Yet the Commission proposal does not answer any of the following questions: If that driver becomes a mobile worker, he must have an employment contract. Who is the employer who is supposed to employ that driver? If he owns his own vehicle, what is he supposed to do? If he has invested in infrastructure or other equipment, who is responsible for the consequences? Furthermore, what are countries that have already included self-employed drivers supposed to do?

4.7 The Committee believes that this proposal is likely to give rise not only to enormous additional costs, but also to an increased administrative burden.

4.8 The EESC considers, however, that the inclusion of self-employed drivers in the scope of Directive 2002/15/EC requires the directive to have been correctly transposed, particularly the definition of self-employed driver. The directive should provide that general administrative tasks are not included in the working time of self-employed people.

Brussels, 25 March 2009.

The President
of the European Economic and Social Committee
Mario SEPI
