

Opinion of the European Economic and Social Committee on 'Road transport — working time of self-employed drivers'

(2009/C 27/12)

On 20 November 2007 the European Economic and Social Committee decided to draw up an additional opinion, under Rule 29 A of the Implementing provisions of its Rules of Procedure, on:

Road transport — working time of self-employed drivers.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 June 2008. The rapporteur was Mr Chagas ⁽¹⁾, replaced by Mr Curtis.

At its 446th plenary session, held on 9 and 10 July 2008 (meeting of 9 July 2008), the European Economic and Social Committee adopted the following opinion by 121 votes to 14, with 6 abstentions.

1. Conclusions

1.1 The EESC believes that all self-employed drivers should be included in the scope of Directive 2002/15/EC (as of 23 March 2009), as provided for by Article 2 thereof.

1.2 This requires Member States to have transposed the directive correctly, particularly the definition of self-employed driver.

1.3 The EESC feels that inclusion of these drivers is necessary in order to promote road safety, foster fair competition and improve the working conditions of mobile and self-employed workers — particularly their physical and mental health. It is understood the general administrative tasks as defined in the directive (Article 3, a-2) are not included in the definition of working time.

1.4 The EESC considers that an internal market in European road transport requires a level playing field, based on the effective practical implementation of social legislation for the industry. Making a distinction as regards the implementation of legislation on working time between mobile and self-employed workers helps to create unfair competition. For this reason the EESC cannot accept the option of only including 'false self-employed' drivers in the scope of the directive.

1.5 To counter the potential difficulties in implementing the inclusion of these drivers the EESC recommends co-liability between the various operators in the transport chain, as per the regulation on driving time and rest periods.

1.6 The EESC points out that promoting cooperation at European level between the different national administrations is essential if the directive is to be implemented effectively.

1.7 The EESC believes that the inclusion of self-employed drivers in the scope of the directive must not result in them being burdened with unnecessary administrative tasks.

2. Introduction

2.1 The EESC has already done extensive work on European road safety policy and has acquired considerable expertise in this area. In its most recent own-initiative opinion, entitled 'European Road Safety Policy and Professional Drivers — Safe and secured parking places' (TEN/290) ⁽²⁾, the Committee addressed the important issue of rest areas for professional drivers, as part of road infrastructure policy. However, another very important issue which complements the opinion on safe and secure parking is the working time of self-employed drivers in road transport. The different economic, social and safety aspects have not yet been addressed adequately at European level. The present additional opinion has also been drawn up in response to the report from the Commission to the Council and the European Parliament on the consequences of the exclusion of self-employed drivers from the scope of 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 (COM(2007) 266 final).

2.2 Directive 2002/15/EC 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. The directive came into force on 23 March 2002 and Member States had three years, until 23 March 2005, to implement its provisions in relation to mobile workers. Article 2(1) of the directive states that its provisions shall apply to self-employed drivers from 23 March 2009. In the meantime, the Commission was to submit a report to the Council and the European Parliament and then a legislative proposal based on the report.

⁽¹⁾ Resigned member.

⁽²⁾ OJ C 175 of 27.7.2007, pp. 88-90.

2.3 As part of the final conciliation agreement reached between the European Parliament and the Council on this directive, it was concluded that no later than two years before this date, i.e. by 23 March 2007, the Commission should present a report to the European Parliament and the Council, which would analyse the consequences of the exclusion of self-employed drivers from the scope of the directive in respect of road safety, conditions of competition, the structure of the profession, and social aspects. The report should take into account the circumstances in each Member State relating to the structure of the transport industry and to the working environment of the road transport profession.

2.4 On the basis of the report, the Commission should submit a proposal either (a) to set out the procedures for inclusion of self-employed drivers who undertake purely national transport activities and who face particular constraints; or (b) not to include self-employed drivers within the scope of the directive.

2.5 Article 7(2) of the directive also required the Commission to assess the consequences of the directive's night work provisions and report on them by 23 March 2007 in the context of the biennial report which it is obliged to provide on the implementation of the directive.

3. The Commission report

3.1 According to the Commission, the report provides an overview of the current state of implementation of the directive by the Member States, addresses the potential consequences of the exclusion of self-employed drivers from its scope and assesses the consequences of its night work provisions.

3.2 The first conclusion is that most Member States did not manage to transpose the directive within the three-year period provided. The Commission does not, therefore, consider itself to be in a position to issue its first biennial report, which was scheduled for March 2007.

3.3 With regard to the consequences of the exclusion of self-employed drivers, the Commission recalls why it had proposed including them: the regulation on driving time and rest periods does not make any such distinction between drivers; to prevent the risk of fragmentation through drivers being encouraged to become '(false) self-employed'; and to ensure that the aims of fair competition and improving road safety and working conditions are applied across the entire sector.

3.4 Based on the conclusions of a report drawn up by external consultants, the Commission acknowledges that fatigue and its consequences for road safety can affect all drivers, whether they are self-employed or a mobile worker. Furthermore, the report also confirmed that self-employed drivers work longer hours than mobile road transport workers and that both categories work more than workers in other sectors.

3.5 Whilst acknowledging that a 'reduction in working time could undoubtedly help reduce fatigue', the external report also concludes that 'this could lead to higher levels of stress, as the self-employed driver tries to achieve more in less time in order to maintain his profitability, which in turn could lead to greater fatigue and accidents'. The Commission appears to share this view.

3.6 As regards the conditions for competition, the Commission accepts the report's conclusion that exclusion of the self-employed would encourage a continuation of the current trend towards fragmentation and that this should not have a significant impact on competition within the industry. By contrast, inclusion would result in an increase in the cost burden and a reduction in working time, so the competitive advantage of the self-employed within the road freight industry would be substantially reduced. The Commission thus appears to favour the option of the directive applying only to 'false' self-employed drivers.

3.7 The Commission also considers that 'while continued exclusion may be preferable for economic reasons, the potential social impacts of exclusion or inclusion are less obvious. Exclusion may not help to mitigate health and safety problems; on the other hand inclusion may generate additional stress and administrative workload for the self-employed while reducing their income'.

3.8 By way of conclusion, the Commission suggests that inclusion might impose greater emotional stress and financial difficulty on the self-employed and be difficult to enforce and therefore ineffective.

3.9 With regard to evaluating the consequences of the directive's provisions on night-working, the Commission concludes that the enforcement of the rules deserves more detailed examination.

4. General comments

4.1 The Committee takes note of the Commission report on the consequences of the exclusion of self-employed drivers from the scope of the directive on the working time of persons performing mobile road transport activities.

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) ⁽³⁾:

⁽³⁾ OJ C 161, 13.7.2007, p. 89.

'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 Against this backdrop, the EESC wishes to express serious doubts as to the conclusions concerning road safety, conditions for competition and the social aspects set out in the study.

4.4 The Committee considers that if there is a will 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 scope of Directive 2002/15/EC should include self-employed drivers.

4.5 Excessive working hours are a major contributory factor to fatigue and hence to falling asleep at the wheel and jeopardising road safety. 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.

4.6 Exclusion of self-employed drivers from the scope of Directive 2002/15/EC does not necessarily cause additional stress, because self-employed drivers will be subject to pressure from contractors to lower their prices. They will have to work longer hours in order to achieve the same profit margin, at the expense of road safety, their health and the already delicate balance between working and family life.

4.7 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.

4.8 The Commission, as guardian of the Treaty, should ensure that the definition of 'self-employed driver', as stipulated in Article 3(e) ⁽⁴⁾ of the directive, is correctly transposed by the Member States. Correct transposal is the first condition that

⁽⁴⁾ Article 3(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 Community legislation under cover of a Community 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 working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to, individually or through a cooperation between self-employed drivers, have commercial relations with several customers.
For the purposes of this Directive, those drivers who do not satisfy these criteria shall be subject to the same obligations and benefit from the same rights as those provided for mobile workers by this Directive.'

needs to be met if a Member State wishes to combat the phenomenon of 'false self-employed' drivers.

4.9 In addition, inclusion of self-employed drivers must be flanked by an amendment to the directive concerning the co-liability of the different players in the transport chain. Article 10(4) of the regulation on driving time and rest periods ⁽⁵⁾ states that 'Undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation.' This co-liability should be extended to the implementation of legislation on working hours. This would help to establish a level playing field for mobile workers and self-employed drivers: when the latter find themselves working as sub-contractors, they face pressure to lower their prices by working long hours. A situation of unfair competition, to the detriment of mobile workers, can thus be avoided.

4.10 The EESC does not consider the study's conclusions on the additional stress that including self-employed drivers in the scope of the directive would entail to be reasonable. The definition of working time that the consultants have used is unclear. If self-employed drivers are, in the same working hours, obliged to carry out the administration and management of all of their transport operations — tasks that mobile workers are not obliged to carry out — additional stress will certainly ensue. If they carry out the same type of activity as mobile workers in the same working hours, it is hard to see why self-employed drivers should suffer greater stress than mobile workers. It is understood the general administrative tasks as defined in the directive (Article 3, a-2) are not included in the definition of working time.

4.11 Moreover, if reducing working time helps to reduce fatigue but creates stress, self-employed workers face an unenviable choice. In the EESC's view, road safety is the number one priority and fatigue as a consequence of long working hours, including driving time, can cause road accidents, whether drivers are mobile or self-employed.

4.12 Furthermore, the study omits to state — and the Commission agrees with its reasoning — that drivers' stress can continue to exist and increase even if they are excluded from the directive, because contractors will certainly raise this possibility in order to exert pressure on drivers to lower their prices.

4.13 The Commission highlights the fact that the Council has not accepted any requirement whatsoever for minimal systematic monitoring of the rules on working hours. Like the

⁽⁵⁾ Regulation (EC) No 561/2006 of the European Parliament and of the Council 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) No 2135/98 and repealing Council Regulation (EEC) No 3820/85.

Commission, the EESC regrets this situation but does not see it as a reason for not adapting legislation to self-employed drivers. The fact that monitoring the working time of self-employed drivers is difficult does not mean that it should not be done. The co-liability of the stakeholders in the transport chain in implementing legislation could, therefore, play a significant role. Should it become clear that contracts between the different stakeholders in the transport chain are such that applying an average duration of 48 hours is impossible, at least one feature will be in place to protect the self-employed driver from excessive driving time and working hours.

4.14 The EESC considers that an internal market in European road transport requires a level playing field, based in particular on the effective practical implementation of social legislation for the industry. Making a distinction for the implementation of legislation on working time between mobile and self-employed workers simply helps to create unfair competition. For this reason the EESC cannot accept the option of only including 'false self-employed' drivers in the scope of the directive.

4.15 The Committee also wishes to point out that a number of States with different road transport operator market structures, such as Estonia (which has few self-employed drivers) and Slovakia (where 70 % of drivers are self-employed) have chosen to include self-employed drivers in Directive 2002/15/EC. This being the case, the EESC fails to understand why the Commission wishes at all costs to keep self-employed drivers outside the scope of Directive 2002/15/EC for economic reasons.

4.16 The Commission rightly acknowledges that the term 'social aspects' covers not only the health and safety and

working conditions of mobile and self-employed workers, but also their remuneration and work-life balance.

4.17 According to the Commission, 'exclusion offers them the possibility of increased job control and higher income, with the need to invest more time and energy to make it profitable'.

4.18 The EESC wishes to point out that the definition of working time for self-employed workers is unclear and/or assumes that general administrative tasks are not carried out during working hours. In the latter example, the EESC fails to understand why higher income for self-employed drivers should be attributed to their exclusion from the working time directive.

4.19 The EESC points out that promoting cooperation at European level between the different national administrations is essential if the directive is to be implemented effectively.

4.20 The EESC believes that the inclusion of self-employed drivers in the scope of the directive must not result in them being burdened with unnecessary administrative tasks.

4.21 In the wake of this study, the Commission wishes to carry out yet another — more detailed — impact assessment before drawing up its legislative proposal. This assessment should take account of new aspects such as the new regulation on driving time and rest periods. Furthermore, the Commission intends this impact assessment to uphold the exclusion of genuine self-employed drivers from the scope of the sector-specific rules on working time. The EESC is not convinced of the added value of another impact assessment.

Brussels, 9 July 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS
