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COMMISSION OF THE EUROPEAN COMMUNITIES

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2008/0195 (COD)

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**

{ SEC(2008) 2631 }
{ SEC(2008) 2632 }

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. CONTEXT OF THE PROPOSAL

1. Directive 2002/15/EC¹ 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 has become applicable on 23 March 2005. Its common rules ensure minimum social protection standards for mobile workers in the road transport sector and are perceived as an important step towards improving the health and safety protection of mobile workers in the sector, enhancing road safety and ensuring fair competition. The Directive, with its provisions aiming at the protection of mobile workers from adverse effects caused by excessively long working hours, inadequate rest or disruptive working patterns, is a *lex specialis* to the general Working Time Directive 2003/88/EC and supplements Regulation (EC) No 561/2006² of 15 March 2006 laying down common rules on driving times and rest periods for drivers.
2. 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. In addition, the Commission is requested to present a report at the latest two years before that date to the European Parliament and the Council, followed by a legislative proposal based on the report, which would either define the modalities for the inclusion or exclude the self-employed drivers from the scope of the Directive (Article 2(1) of the Directive).
3. The Commission report³ addressing potential consequences of the exclusion of self-employed drivers from the scope of the Directive and assessing the effects of its night time provisions in respect of road safety, conditions of competition, the structure of the profession and social aspects was presented to the European Parliament and the Council in May 2007. The different ways in which its provisions are interpreted and implemented in various Member States may result in distortions of competition and differences in the minimum social standards applied across Member States. The difficulties lie in particular in an unclear distinction between mobile workers and self-employed drivers, which has led to enforcement problems and the risk of an increasing phenomenon of 'false' self-employed drivers for the purpose of avoiding falling in the scope of the directive. The report therefore concluded that there was not a decisive case for including self-employed drivers under the directive, but that it was important to address the issue of definitions and make them clear through an appropriate amendment that the notion of mobile worker covered by the directive also included the so-called 'false' self-employed drivers, i.e. those drivers who are not tied to an employer by an employment contract but who do not have the freedom to have relations with several customers.
4. In line with the Commission's commitment for better regulation, Community legislation should be clear, targeted, proportionate and enforceable. Following in-depth investigation with regard to its effects on road safety, conditions of

¹ OJ L 80, of 23.3.2002, p.35

² OJ L 102, of 11.4.2006, p.1

³ COM(2007) 266 final

competition, the structure of the profession as well as social aspects, the impact assessment has demonstrated that despite significant administrative costs, a full coverage of employed and self-employed drivers would not be enforceable and therefore the best option is to tackle the problem of false self-employed, instead of extending the scope of the Directive also to self-employed.

5. This proposal for a directive amending Directive 2002/15/EC is therefore intended to enhance clarity, readability and enforceability of the current rules by providing a more precise definition of mobile workers including so called 'false' self-employed drivers under this category of workers and therefore subject to the directive.
6. In the same report the Commission was also requested to assess the night time provisions (article 7(2) of the Directive). The report concluded that there is no demand to change or further harmonise the night time provisions. On this occasion it is also advisable to amend the definition of 'night work' contained in Article 3(i) of Directive 2002/15/EC. As it is worded now, 'night work' would include even very short periods of work, of a few minutes for instance, performed during night time. As such, the provision is economically and socially disproportionate and unnecessary. The Commission therefore proposes to reintroduce a minimum working time of 2 hours in the definition of night work as initially proposed.

B. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

7. The stakeholder consultations carried out in years 2006 and 2007 revealed that the majority of stakeholders regard the Directive as having mixed negative and positive impacts on different aspects. On the one hand, the working time rules are regarded by the majority as having positive impacts on health and safety, working conditions and aligning conditions of competition between transport companies, but on the other hand they bring about numerous negative side-effects such as loss of salary, shortage of drivers, and decrease in cost-effectiveness of the sector.
8. Almost all stakeholders highlighted problems related to the practice of implementing the working time rules and indicated that the existing system of controls and checks on drivers is weak. This further leads to distortions of competition putting those who abide by the rules in a disadvantaged position.
9. As regards foreseen impacts of inclusion or exclusion of self-employed drivers there were diverging views of different stakeholders, in particular with regard to a practice of enforcement and added value in terms of road safety and fair competition.
10. Generally stakeholders advocate: clarifying the scope of the Directive as well as certain definitions and provisions, improving effectiveness and efficiency of the enforcement regime, enhancing cooperation between national enforcement authorities, preventing the phenomenon of 'false' self-employed drivers.
11. All the comments made during stakeholder consultations have been taken into consideration in the course of the impact assessment carried out in 2007-2008. The aim of the impact assessment was to identify the best policy option, which would be enforceable, avoid unnecessary administrative burden as well as possible negative

side-effects of the proposed arrangements and which would at the same time contribute to EU transport policy objectives.

12. Besides the basic policy options of inclusion and exclusion of self-employed drivers from the scope of the Directive, the impact assessment looked also at other measures such as strengthening the definition of mobile workers drivers in order to include "false self-employed", improving effectiveness, efficiency and consistency of enforcement regime in order to address the problem of low compliance. All possible economic, social, environmental and administrative impacts of four main policy options have been analyzed.
13. In view of the results of assessing the impacts of different policy options, this proposal reflects the combination of the option concerning inclusion of 'false self-employed' within the scope of the Directive by providing for legal clarification and the option of enhanced enforcement by establishing monitoring and control requirements by Member States. Indeed, it is only through efficient control of the applicable rules that the full effect of the provisions of the Directive is guaranteed.
14. The executive summary and the full text of the impact assessment accompany this proposal. The impact analyses show that current working time rules combined with enhanced clarity of the scope of the Directive and accompanied by enforcement requirements will improve compliance with social rules, reduce distortions of competition and enable Member States to avoid administrative burden and potential enormous enforcement costs related to setting up an EU wide complex enforcement regime.
15. **Subsidiarity**
The proposal conforms to the subsidiarity principle as it aims essentially at clarification of the scope of the existing Community rules and improvement of their enforcement, which cannot be achieved by the Member States alone. Moreover the proposal seeks to improve exchange of information between the Member States' authorities which monitor the compliance with the rules. A Community action is therefore necessary since it is impossible for a single Member State or group of Member States to satisfactorily solve the identified problems.
16. **Proportionality**
The proposal is in conformity with the proportionality principle as it does not exceed what is required to achieve its objective. It clarifies the scope of current rules and lays down general common requirements for ensuring their equitable enforcement, but does not prevent Member States from taking national decisions on the individual monitoring and control arrangements.
17. The proposal will not entail any additional costs for the Community budget and will not cause an administrative burden for Member States.

C. EXPLANATION OF AMENDMENTS

18. The proposal introduces the following modifications without changing the overall purpose of the directive, namely social protection of workers and those who are assimilated to workers under the social rules in road transport:

Article 2(1) of the Directive clarifies the scope. The Directive applies to all mobile workers as defined in Article 3(d) 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. It does not cover genuine self-employed drivers who are not in the scope of the Directive.

Article 3(a) maintains the definition of 'working time' applicable to all drivers covered by the directive, but deletes the definition of "working time" for self-employed drivers as they fall out of the scope. In order to tackle the phenomenon of so called false self-employed, a more precise definition of 'mobile workers' is added to article 3 (d).

Article 3(i) makes the definition of "night work" applicable in practice.

Article 11(a) introduces common principles designed to ensure greater transparency and effectiveness of national enforcement regimes, common understanding of the rules and their equitable application. The new provisions also call for greater cooperation between Member States' relevant authorities responsible for enforcement as well as for support from the Commission to facilitate the dialogue between enforcers and industry and between Member States to ensure common approach to the implementation of working time rules. All this aims at improving compliance with the Community rules and consequently at contributing to EU transport policy objectives.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 and Article 137(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:

- (1) Council Regulation (EC) No 561/2006 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) 2135/98 and repealing Council Regulation (EEC) No 3820/85⁷ lays down common driving times, breaks and rest periods for drivers. That Regulation does not cover other aspects of working time for the road transport sector.
- (2) 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 activities⁸ 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.
- (3) Article 2(1) of Directive 2002/15/EC requires the Commission to report on the exclusion of self-employed drivers from the scope of the Directive and to make a proposal to that end.

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L 102, 11.4.2006, p. 1.

⁸ OJ L 80, 23.3.2002, p. 35.

- (4) The Commission report on the consequences of the exclusion of self employed drivers from the scope of the Directive 2002/15/EC and on the consequences of the night time provisions⁹ was presented to the European Parliament and the Council in May 2007.
- (5) The experience with the transposition of Directive 2002/15/EC, stakeholder consultations, several studies and the impact assessment carried out revealed problems with the practice of implementing working time rules uniformly, low compliance discipline and weak enforcement regimes in Member States.
- (6) As a consequence of differences in interpretation, application and enforcement of the provisions of Directive 2002/15/EC by the Member States and of a failure to adhere to the minimum working time standards by transport companies and drivers, competition is distorted, and the safety and health of drivers is jeopardized.
- (7) In the light of the Commission report and the impact assessment, self-employed drivers should be excluded from the scope of Directive 2002/15/EC.
- (8) Nevertheless, it is desirable that Member States continue to alert self-employed drivers of the adverse effects on health and safety as well as of negative impacts on road safety caused by excessively long working hours, inadequate rest or disruptive working patterns.
- (9) It is therefore necessary to make certain technical adjustments to the text of Directive 2002/15/EC.
- (10) The Community legislation is only efficient and effective if it is implemented by all Member States, applied equally to all actors concerned and controlled on a regular basis and in an efficient manner.
- (11) Monitoring compliance is a complex task with multiple actors and therefore it requires cooperation between Member States and the Commission, as well as between Member States themselves.
- (12) It is therefore appropriate to modernise Directive 2002/15/EC in order to remedy shortcomings in the implementation, application and enforcement of the rules by clarifying its scope, reinforcing administrative cooperation among Member States and promoting the exchange of information and good practice.
- (13) The objective of this Directive, namely the modernisation of Community law on the organisation of working time and enhancing its enforceability, cannot be sufficiently achieved by Member States and can, therefore be better achieved at Community level; the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, the Directive does not go beyond what is necessary in order to achieve these objectives.
- (14) This Directive respects fundamental rights and observes the principles specifically recognised in particular by the Charter of Fundamental Rights of the European Union. In particular it seeks to ensure the right of every worker to working conditions which

⁹ COM(2007) 266 final

respect his or her health and safety as well as the right to limitation of maximum working hours, to daily and weekly rest periods (Article 31 of the Charter of Fundamental Rights of the European Union).

(15) Directive 2002/15/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2002/15/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The Directive shall apply to mobile workers, as defined in Article 3(d) of this Directive, employed by undertakings established in a Member State, participating in road transport activities covered by Regulation (EC) No 561/2006 or, failing that, by the AETR Agreement.

This Directive shall also apply to mobile workers as defined in the second sentence of Article 3(d).

(b) in paragraphs 2 and 3 the reference "Directive 93/104/EC" is replaced by the reference "Directive 2003/88/EC".

(c) in paragraph 4 the reference "Regulation (EEC) No 3820/85" is replaced by the reference "Regulation (EC) No 561/2006".

(2) Article 3 is amended as follows

(a) point (a) 2, first sentence is deleted.

(b) The following sentence is added to point (d):

"'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:

- 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."

(c) point (e) is deleted.

(d) point (f) is replaced by the following:

"(f) 'person performing mobile road transport activities' shall mean any mobile worker who performs such activities;"

(e) point (i) is replaced by the following:

"(i) 'night work' shall mean work during a period of work which includes at least two hours work performed during night time."

- (3) In Article 4(a) the reference "the fourth and fifth subparagraphs of Article 6(1) of Regulation (EEC) No 3820/85 or, where necessary, the fourth subparagraph of Article 6(1) of the AETR agreement" is replaced by the reference "Regulation (EC) No 561/2006 or, where necessary, the AETR Agreement".
- (4) In Article 5(1) the reference "Regulation (EEC) No 3820/85" is replaced by the reference "Regulation (EC) No 561/2006".
- (5) In Article 6 the reference "Regulation (EEC) No 3820/85" is replaced by the reference "Regulation (EC) No 561/2006".
- (6) The following Article 11a is inserted:

'Article 11a

Enforcement

- (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.
- (2) Member States shall communicate to the Commission details of the monitoring and controls arrangements set up.
- (3) Member States shall take the necessary measures to ensure that transport undertakings and mobile workers have access to information, assistance and advice in the field of working time rules and work organisation.
- (4) With a view to ensuring the effective, efficient and uniform implementation of the Directive throughout the Community, the Commission shall support dialogue between Member States with the following aims:
 - (a) to reinforce administrative cooperation between their competent authorities, through the adoption of effective systems of exchange of information, the improvement of access to information and the promotion of exchange of information and good practices in enforcement of working time rules;
 - (b) to promote a common approach to the implementation of this Directive;
 - (c) to facilitate dialogue between the transport sector and enforcement authorities."

- (8) In Article 13 the reference "Article 16(2) Regulation (EEC) No 3820/85" is replaced by the reference "Article 17(1) of Regulation (EC) No 561/2006".

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President