



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 10 January 2000 (18.01)
(OR. fr)**

5185/01

**Interinstitutional File:
1998/0319 (COD)**

LIMITE

**TRANS 1
SOC 5
CODEC 17**

OUTCOME OF PROCEEDINGS

of : 2324th Council meeting (Transport) on 20 and 21 December 2000

No. prev. doc. : 14675/00 TRANS 232 SOC 497 CODEC 1046

No. Cion prop. : 13526/98 TRANS 200 SOC 462 MAR 80 AER 67 + COR 1
13972/00 TRANS 195 SOC 463 CODEC 931

Subject : **LAND TRANSPORT**

- Draft Directive of the European Parliament and of the Council on the organisation of **the working time** of persons whose occupation is the performance of mobile road-transport activities
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1. At its meeting on 20 and 21 December 2000 the Council agreed in principle, by qualified majority, on

- the draft common position on the above Directive, the text of which is set out in Annex I hereto¹;
- the entry in the minutes of the Council meeting at which the common position is adopted of the statement set out in Annex II hereto.

2. The Irish and Portuguese delegations voted against the draft Council common position and the United Kingdom delegation abstained. The Portuguese delegation gave the following explanation of vote:

"Portugal declares that the scheme adopted by this Directive, by excluding self-employed drivers, brings into question important objectives of the common transport policy. As a result of this scheme, conditions involving distortion of competition are established, serious harm is done to road safety and nothing is done to promote the quality of services. Portugal accordingly votes against the Directive. It also declares that it does not endorse the statement made on behalf of the Council".

¹ At its meeting on 22 January 2001 the Working Party on Land Transport will examine the text of the recitals drawn up by the Secretariat.

DRAFT DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the organisation of the working time of persons whose occupation is the performance of
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 Articles 71
and 137(2) thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the Economic and Social Committee ²,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ³,

Whereas:

- (1) Article 71 of the Treaty provides that the Council shall adopt, amongst other things, common rules applicable to road transport as well as measures designed to improve road safety.
- (2) Article 137 of the Treaty provides that the Council shall adopt by means of Directives, minimum requirements intended to encourage improvements, especially in the working environment, in order to guarantee a better level of protection of the health and safety of workers.

¹ OJ C 43, 17.2.1999, p. 4.

² OJ C 138, 18.5.1999, p. 33.

³ OJ C 219, 30.7.1999, p. 235. (Opinion delivered on 14 April 1999 and confirmed following the change of procedure (from cooperation to codecision) on 6 May 1999 (OJ C 279, 1.10.1999, p. 270).

- (3) Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport ¹ laid down common rules on driving times and rest periods for drivers; that Regulation does not cover other aspects of working time for road transport.
- (4) Council Directive 93/104/EC of 23 November 1993 concerning aspects of the organisation of working time ², before being amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, laid down minimum safety and health requirements for the organisation of working time applicable to all sectors of activity, both public and private, with the exception of air, rail, road, sea, inland waterway and lake transport amongst others.
- (5) The Council recognised in the preamble to Directive 93/104/EC that it might be necessary to adopt separate measures concerning the organisation of working time in certain sectors and activities which are excluded from the scope of that Directive.
- (6) The scope of Directive 93/104/EC as amended by Directive 2000/34/EC includes road transport.
- (7) Despite intensive negotiations between the social partners, it has not been possible to reach agreement on the subject of mobile workers in road transport.
- (8) It is therefore necessary to lay down a series of more specific provisions concerning the hours of work in road transport intended to ensure the safety of transport and the health and safety of the persons involved.

¹ OJ L 370, 31.12.1985, p. 1.

² OJ L 307, 13.12.1993, p. 18. Last amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC to cover sectors and activities excluded from that Directive. (OJ L 195, 1.8.2000, p. 41).

- (9) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action cannot be satisfactorily achieved by the Member States; in view of the magnitude and scope of the action proposed those objectives can best be achieved at Community level by the introduction of minimum provisions applicable throughout the Community; this Directive constitutes no more than the minimum necessary to achieve those objectives.
- (10) In accordance with Article 14 of Directive 93/104/EC, the provisions of this sectoral Directive take precedence.
- (11) The provisions of Regulation (EEC) No 3820/85 on driving time and, as required, the provisions of the AETR take precedence over the provisions of this Directive.
- (12) The scope of this Directive covers, at least initially, only persons whose occupation is the performance of mobile road-transport activities covered by Regulation (EEC) No 3820/85 or, failing that, by the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) ¹.
- (13) Self-employed drivers should be excluded temporarily from the scope of this Directive on the understanding that two years after the deadline for the transposition of this Directive the Commission will assess the consequences of that temporary exclusion.

¹ Agreement concluded in Geneva on 1 July 1970. The second amendment to that agreement entered into force on 24 April 1992.

- (14) It must be ensured that the mobile workers thus excluded from the scope of this sectoral Directive can benefit from the basic protection provided for in Directive 93/104/EC as amended by Directive 2000/34/EC. That basic protection includes the existing rules on adequate rest, the maximum average working week, annual leave and certain basic provisions for night workers including health assessment.
- (15) The definitions used in this Directive must not constitute a precedent for other Community regulations on working time.
- (16) In order to improve road safety, prevent the distortion of competition and guarantee the safety and health of the mobile workers covered by this Directive, the latter must know exactly which road transport activities are considered as working time and which are excluded from working time and are considered as break times, rest times and periods of availability; these workers must be granted minimum daily and weekly periods of rest, and adequate breaks; it is also necessary to place a maximum limit on weekly working hours.
- (17) Research has shown that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of organisation and that long periods of night work can be detrimental to the health of workers and can endanger their safety and also road safety in general.
- (18) As a consequence there is a need to limit the duration of periods of night work and to provide that professional drivers who work at night should receive appropriate compensation for their activity and should not be disadvantaged as regards training and promotion opportunities.
- (19) Employers must keep records of instances when the maximum average week applicable to mobile workers is exceeded.

- (20) Regulation (EEC) No 3820/85 on driving time in international and national passenger transport, other than regular services, ought to continue to apply; the working time of drivers carrying out such transport may therefore, subject to certain conditions, exceed the maximum weekly average laid down in this Directive for goods transport and for regular passenger transport services.
- (21) The Commission ought to monitor the implementation of this Directive and developments in this field in the Member States and submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a report on the application of the rules and the consequences of the provisions on night work.
- (22) It is necessary to provide that certain provisions may be subject to derogations implemented, according to the case, by the Member States or the two sides of industry; as a general rule, in the event of a derogation, the workers concerned must be given compensatory rest periods,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose and scope

1. The purpose of this Directive shall be to establish minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of persons whose occupation is the performance of mobile road-transport activities and to improve road safety and align conditions of competition.
2. This Directive shall apply to mobile workers employed by undertakings established in a Member State, participating in road-transport activities covered by Regulation (EEC) No 3820/85 or, failing that, by the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR).

An assessment of the consequences of the temporary exclusion of self-employed drivers will be submitted by the Commission to the Council and the European Parliament two years after the deadline for transposition of the Directive. It will analyse in particular the effects of the exclusion of self-employed drivers on road safety, on conditions of competition, on the structure of the profession and on social aspects. In the light of the outcome of that analysis the Commission will, if appropriate, propose conditions under which, at the latest three years after the date of transposition, the provisions of this Directive will apply to self-employed drivers, the definition of which will have to be made clear.

3. Directive 93/104/EC as amended by Directive 2000/34/EC shall apply to mobile workers excluded from the scope of this Directive.

4. Insofar as this Directive contains more specific provisions as regards mobile workers performing road transport activities, it shall take precedence, pursuant to Article 14 of Directive 93/104/EC ¹, over the relevant provisions of Directive 93/104/EC as amended by Directive 2000/34/EC ².
5. This Directive shall supplement the provisions of Regulation (EEC) No 3820/85 and, where necessary, of the AETR Agreement, which take precedence over the provisions of this Directive.

Article 2

Definitions

For the purposes of this Directive:

1. "working time" shall mean the time from the beginning to the end of work, during which the mobile worker is at work, at the disposal of the employer and exercising his functions or activities, that is to say;
 - the time devoted to all road transport activities. These activities are in particular, the following: driving, loading and unloading, assisting passengers boarding and disembarking from the vehicle, cleaning and technical maintenance as well as all other work intended to ensure the safety of the vehicle, its cargo and passengers;
 - the times during which the mobile worker is required to remain at his place of work, ready to take up work, and cannot, on the instructions of his employer, dispose freely of his time, in particular during periods awaiting loading or unloading, where their duration is not known in advance, that is to say either before departure or just before the effective start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States.

The break times referred to in Article 4, the rest times referred to in Article 5 and, without prejudice to the legislation of Member States or agreements between the social partners providing that such periods should be compensated or limited, the periods of availability referred to in paragraph 2 of this Article, shall be excluded from working time.

¹ Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ L 307, 13.12.1993, p. 18).

² Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Directive 93/104/EC to cover sectors and activities excluded from that Directive (OJ L 195, 1.8.2000, p. 41).

2. "periods of availability" shall mean:
 - periods other than those relating to break times and rest times during which the mobile worker is not required to remain at his place at work, but must be available to answer any calls to start or resume driving or to carry out other work. In particular such periods of availability shall include periods during which the mobile worker is accompanying a vehicle being transported by ferryboat or by train as well as periods of waiting at frontiers and those due to traffic prohibitions. These periods and their foreseeable duration shall be known in advance by the mobile worker, that is to say either before departure or just before the effective start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States;
 - for mobile workers driving in a team, the time spent sitting next to the driver or on the couchette while the vehicle is in motion;
3. "workstation" shall mean:
 - the location of the undertaking for which the mobile worker carries out duties,
 - the vehicle which the mobile worker uses when he carries out duties and
 - any other place in which activities connected with transportation are carried out;
4. "mobile worker" shall mean any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;
5. "self-employed driver" shall mean anyone whose main occupation is to carry passengers or goods by road at a customer's request;
6. "week" shall mean the period between 00.00 hours on Monday and 24.00 hours on Sunday;
7. "night time" shall mean a period of at least four hours, as defined by national law, between 24.00 hours and 07.00 hours;
8. "night work" shall mean any work performed during the night time.

Article 3

Maximum weekly working time

Member States shall take the measures necessary to ensure that:

1. the average weekly working time may not exceed forty-eight hours. The maximum weekly working time may be extended to sixty hours only if, over four months, an average of forty-eight hours a week is not exceeded. Article 6(1), (4) and (5) of Regulation (EEC) No 3820/85 or, where necessary, the fourth subparagraph of Article 6(1) of the AETR Agreement shall take precedence over this Directive, insofar as the drivers concerned do not exceed an average working time of forty-eight hours a week over four months;
2. working time for different employers is the sum of the working hours. The employer shall ask the mobile worker concerned in writing for an account of time worked for another employer. The mobile worker shall provide such information in writing.

Article 4

Breaks

1. Member States shall take the measures necessary to ensure that, without prejudice to the level of protection provided by Regulation (EEC) No 3820/85 or, failing that, by the AETR Agreement, mobile workers in no circumstances work for more than six consecutive hours without a break. Working time shall be interrupted by a break of at least thirty minutes, if working hours total between six and nine hours, and of at least forty-five minutes, if working hours total more than nine hours.
2. Breaks may be subdivided into periods of at least fifteen minutes each.

Article 5
Rest periods

For the purposes of this Directive, apprentices and trainees shall be covered by the same provisions on rest time as other mobile workers in pursuance of Regulation (EEC) No 3820/85 or, failing that, of the AETR Agreement.

Article 6
Night work

1. Member States shall take the measures necessary to ensure that:
 - if night work is performed, the daily working time does not exceed ten hours in each twenty-four-hour period,
 - compensation for night work is given in accordance with national legislative measures, collective agreements, agreements between the two sides of industry and/or national practice, on condition that such compensation is not liable to endanger road safety.
2. Provisions relating to the training of professional drivers, including those who perform night work, shall form the subject of a proposal for a Commission Directive laying down the general principles of such training.
3. Two years after the implementation of this Directive, within the framework of the report which it draws up in accordance with Article 12(5), the Commission shall assess the consequences of the provisions laid down in paragraph 1. The Commission shall, if necessary, submit appropriate proposals consequent upon that report.

Article 7

Derogations

1. Derogations from Articles 3 and 6 may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry, provided that the persons concerned are afforded equivalent periods of compensatory rest.

2. The option to derogate from Article 3 may not result in the establishment of a reference period exceeding six months, for calculation of the average maximum weekly working time of forty-eight hours.

Article 8

Information and records

Member States shall ensure that:

- (a) mobile workers are informed of the relevant national requirements, statutory orders and agreements between the two sides of industry, in particular collective agreements and any company agreements, reached on the basis of this Directive; without prejudice to Directive 91/533/EEC ¹;

- (b) the working time of mobile workers is recorded.
Records shall be preserved for at least one year after the end of the period covered.
Employers shall be responsible for recording the working time of mobile workers.
Employers shall upon request provide mobile workers with copies of the records of hours worked.

¹ Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.1.1991, p. 32).

Article 9
More favourable provisions

This Directive shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the health and safety of mobile workers or their right to facilitate or permit the application of collective agreements or other agreements concluded between the two sides of industry which are more favourable to the protection of the health and safety of mobile workers.

Article 10
Penalties

Member States shall determine the range of penalties applicable for infringements of national provisions implementing this Directive and shall take all necessary steps to ensure that they are enforced. The penalties must be effective, commensurate with the infringement, and must constitute a sufficient deterrent.

Article 11
Negotiations with third countries

Once this Directive has entered into force, the Community shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive to mobile workers employed by enterprises established in a third country.

Article 12
Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by* or shall ensure by that date that the two sides of industry have established the necessary measures by agreement, the Member States being obliged to take any steps to allow them to be able at any time to guarantee the results required by this Directive.
2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to the persons referred to in Article 1(2).
4. Member States shall report to the Commission every two years on the implementation of this Directive, indicating the views of the two sides of industry. The report must reach the Commission no later than 30 September following the date on which the two-year period covered by the report expires. The two-year period shall be the same as that referred to in Article 16(2) of Regulation (EEC) No 3820/85.
5. The Commission shall produce a report every two years on the implementation of this Directive by Member States and developments in the field in question. The Commission shall forward this report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

* Three years after the entry into force of this Directive.

6. Member States shall communicate to the Commission the provisions of national law which they have already adopted or which they adopt in the field covered by this Directive.

Article 13

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 14

This Directive is addressed to the Member States.

Done at, on

For the European Parliament
The President

For the Council
The President

Statement to be entered in the minutes of the Council meeting at which the Directive of the European Parliament and of the Council on the organisation of the working time of persons whose occupation is the performance of mobile road-transport activities is adopted

Re the Directive as a whole

"The Commission has undertaken to submit, as early as January 2001, a proposal for a Regulation amending Regulation (EEC) No 3820/85.

The Council requests the Commission to take advantage of this opportunity and undertakes to study the amendments to the Regulation, in particular those resulting from the new definitions of time other than driving time, and to act on such proposals as soon as possible."