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THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Common Position adopted by the Council with a view to the adoption of a 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

DIRECTIVE 2001/.../EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of

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,

After consulting the Committee of the Regions,

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

¹ OJ C 43, 17.2.1999, p. 4.

² OJ C 138, 18.5.1999, p. 33.

³ Opinion of the European Parliament of 14 April 1999 (OJ C 219, 30.7.1999, p. 235), as confirmed on 6 May 1999 (OJ C 279, 1.10.1999, p. 270), Council Common Position of (not yet published in the Official Journal) and Decision of the European Parliament of (not yet published in the Official Journal).

Whereas:

- (1) 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.
- (2) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time ² makes it possible to adopt more specific requirements for the organisation of working time. Bearing in mind the sectoral nature of this Directive, the provisions thereof take precedence over Directive 93/104/EC by virtue of Article 14 thereof.
- (3) Despite intensive negotiations between the social partners, it has not been possible to reach agreement on the subject of mobile workers in road transport.
- (4) 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.
- (5) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action 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, this Directive does not go beyond what is necessary in order to achieve those objectives.

¹ OJ L 370, 31.12.1985, p. 1.

² OJ L 307, 13.12.1993, p. 18. Directive as amended by Directive 2000/34/EC of the European Parliament and of the Council (OJ L 195, 1.8.2000, p. 41).

- (6) The scope of this Directive covers only mobile workers employed by transport undertakings established in a Member State participating in 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).
- (7) It should be made clear that mobile workers excluded from the scope of this Directive, other than self-employed drivers, benefit from the basic protection provided for in Directive 93/104/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.
- (8) As self-employed drivers are included within the scope of Regulation (EEC) No 3820/85 but excluded from that of Directive 93/104/EC, they should be excluded temporarily from the scope of this Directive on the understanding that the Commission will assess the consequences of that temporary exclusion.
- (9) The definitions used in this Directive are not to constitute a precedent for other Community regulations on working time.

- (10) 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 should know exactly which periods devoted to road transport activities constitute working time and which do not and are thus deemed to be break times, rest times or periods of availability. These workers should be granted minimum daily and weekly periods of rest, and adequate breaks. It is also necessary to place a maximum limit on the number of weekly working hours.
- (11) 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.
- (12) 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 opportunities.
- (13) Employers should keep records of instances when the maximum average working week applicable to mobile workers is exceeded.
- (14) The provisions of Regulation (EEC) No 3820/85 on driving time in international and national passenger transport, other than regular services, should 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.

- (15) The Commission should 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.
- (16) It is necessary to provide that certain provisions may be subject to derogations adopted, according to the circumstances, 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

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.

Article 2

Scope

1. 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 AETR Agreement.

By^{*}, the Commission shall submit an assessment of the consequences of the temporary exclusion of self-employed drivers to the European Parliament and to the Council. The assessment shall 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. Depending on the outcome of that analysis, the Commission will propose if appropriate conditions under which this Directive will apply to self-employed drivers, the definition of which will have to be made clear, at the latest on^{**}.

2. The provisions of Directive 93/104/EC shall apply to mobile workers excluded from the scope of this Directive.

3. Insofar as this Directive contains more specific provisions as regards mobile workers performing road transport activities it shall, pursuant to Article 14 of Directive 93/104/EC, take precedence over the relevant provisions of that Directive.

4. 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.

^{*} Five years after the entry into force of this Directive.

^{**} Six years after the entry into force of this Directive.

Article 3

Definitions

For the purposes of this Directive:

- (a) "working time" shall mean the time from the beginning to the end of work, during which the mobile worker is at his workstation, 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 workstation, 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 foreseeable duration is not known in advance, that is to say either before departure or just before the actual 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 5, the rest times referred to in Article 6 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 (b) of this Article, shall be excluded from working time;

(b) "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 workstation, 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 actual 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;

(c) "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;

- (d) "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;
- (e) "self-employed driver" shall mean anyone whose main occupation is to carry passengers or goods by road at a customer's request;
- (f) "week" shall mean the period between 00.00 hours on Monday and 24.00 hours on Sunday;
- (g) "night time" shall mean a period of at least four hours, as defined by national law, between 00.00 hours and 07.00 hours;
- (h) "night work" shall mean any work performed during night time.

Article 4

Maximum weekly working time

Member States shall take the measures necessary to ensure that:

- (a) 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. 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 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;

- (b) 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 5

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 6

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 7

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. By^{*}, the Commission shall, within the framework of the report which it draws up in accordance with Article 13(2), assess the consequences of the provisions laid down in paragraph 1 above. The Commission shall, if necessary, submit appropriate proposals along with that report.

3. The Commission shall present a proposal for a Directive containing provisions relating to the training of professional drivers, including those who perform night work, and laying down the general principles of such training.

Article 8

Derogations

1. Derogations from Articles 4 and 7 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.

^{*} Five years after the entry into force of this Directive.

2. The option to derogate from Article 4 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 9

Information and records

Member States shall ensure that:

- (a) mobile workers are informed of the relevant national requirements, the internal rules of the undertaking 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 Council 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 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 OJ L 288, 18.10.1991, p. 32.

Article 10

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 11

Penalties

Member States shall lay down a system of penalties for breaches of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that these penalties are applied. The penalties thus provided for shall be effective, proportional and dissuasive.

Article 12

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 undertakings established in a third country.

Article 13

Reports

1. 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.
2. 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.

Article 14

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.

When Member States adopt the measures referred to in the first subparagraph, 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.

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

2. 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 2(1).

3. 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 15

Entry into force

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

Article 16

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

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