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COMMISSION STAFF WORKING DOCUMENT

Accompanying the

REPORT FROM THE COMMISSION

on the implementation in 2005-2006 of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities (1st report from the Commission on the implementation of the working time rules relating to road transport)

{COM(2009) 415}

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1. DIRECTIVE 2002/15/EC¹ IN GENERAL

1.1. Background

On 15 July 1997 the Commission adopted a White Paper on sectors and activities excluded from the Working Time Directive², in which it proposed several approaches designed to protect the health and safety of workers in the sectors excluded from the basic Directive.

Following consultations with the social partners, the Commission concluded, in its Communication of 31 March 1998³ that nothing justified treating mobile workers and non-mobile workers in a different way and that therefore the basic principles of the working time Directive should apply to all workers.

On 15 October 2008 the Commission published adopted a proposal to amend Directive 2002/15/EC on the organisation of working time of mobile workers in road transport⁴.

1.2. Main Provisions

Directive 2002/15/EC on the organisation of mobile workers in road transport lays down minimum standards to protect the health and safety of road transport workers, avoid distortions to competition within the Community and improve road safety.

Directive 2003/88/EC⁵ concerning certain aspects of the organisation of working time (hereinafter: Basic Working Time Directive) provides for the replacement of its general provisions with more specific requirements. This is the case in the field of road transport.

¹ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of working time of persons performing mobile road transport activities, OJ L 80, 23.3.2002, p. 35

² COM(97) 334 final - not published in the Official Journal

³ SEC(1998) 537 final - not published in the Official Journal

⁴ COM (2008) 650 final of 15 October 2008 Oct, Proposal for a Directive of the European Parliament and the Council amending Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities

⁵ Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299 , 18.11.2003 p. 9

The Directive on the organisation of mobile workers in road transport supplements the provisions of Regulation (EC) No. 561/2006⁶ on driving times and rest periods that are of direct influence on road safety, and competition, as they specify the maximum driving time allowed.

The provisions of Directive 2002/15/EC on the organisation of mobile workers in road transport take precedence over the relevant provisions of the Basic Working Time Directive because it contains more specific provisions as regards workers.

The Directive establishes:

- that the average weekly working time may not exceed 48 hours. It can be extended to 60 hours by the competent bodies only if an average of 48 hours per week is not exceeded within a period of four months;
- an obligation to take a break after six hours of work;
- that daily working time may not exceed ten hours for night workers;
- that records are kept of the workers' working time.
- Member States must take the measures necessary to ensure that the employer posts or displays in a place accessible to all workers a copy of this Directive and of the corresponding domestic law. The employer is required to record the working time of mobile workers and to keep these records for at least one year.

According to 8 of the Directive, Member States may derogate from these provisions on condition that social partners were consulted. These derogations should not lead to a reference period of calculation of the average maximum weekly working time of 48 hours, which exceeds six months. Article 10 enables them to put in place provisions, which are more favourable to workers.

It is for the Member States to decide upon the penalties for infringements. These penalties must be effective, commensurate with the infringement and constitute a sufficient deterrent.

Following Article 13 (1) of Directive 2002/15/EC on the organisation of mobile workers in road transport Member States must report to the Commission on the implementation of this Directive every two years indicating among others the viewpoints of the social partners. Paragraph (2) of the said provision obliges the Commission to produce a report every two years on the implementation of this Directive by Member States, which is then forwarded to the Council, the European Parliament and the Economic and Social Committee.

⁶ Regulation (EC) 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, OJ L 102 11.4.2006, p. 1

1.3. Relationship to other legal acts

1.3.1. Relationship to Directive 2003/88/EC

Directive 2002/15/EC on the organisation of mobile workers in road transport is a *lex specialis* to the Basic Working Time Directive.

The Basic Working Time Directive was adopted by the European Parliament and the Council under Article 137(2) TEC, which provides for Community measures to improve the working environment by protecting worker's health and safety.

The Directive's main purpose is to lay down minimum safety and health requirements for the organisation of working time and establishes common minimum requirements for all Member States, which include

- daily and weekly rest breaks for workers
- a rest break during working time
- limits to weekly working time for workers
- paid annual leave for workers
- extra protection for night workers

The Basic Working Time Directive constitutes a rule of Community social law of particular importance, from which every worker must benefit.

In its Article 14, the Basic Working Time Directive states that it shall not apply, where more specific requirements are laid down in other Community instruments.

In Directive 2002/15/EC on the organisation of mobile workers in road transport, there are several references to the Basic Working Time Directive.

Recital 2 recalls Article 14 of the Basic Working Time Directive and underlines the sectoral character of Directive 2002/15/EC on the organisation of mobile workers in road transport.

Recital 7 says that workers excluded from the scope of this Directive should nevertheless benefit from the protection of the Basic Working Time Directive.

1.3.2. Relationship to Regulation (EC) No 561/2006

As has been said before, the Directive supplements the provisions of Regulation (EC) No 561/2006 on driving times and rest periods.

According to Article 4 (maximum weekly working time) of the Directive, the fourth and fifth subparagraphs of Article 6(1) of Regulation (EC) No. 561/2006 on driving times and rest periods or – where applicable – the respective provisions of the European Agreement concerning the work of Crews of Vehicles engaged in International Road Transport of 1st July 1970 (AETR Agreement) take precedence over the Directive as far as drivers concerned do not exceed an average working time of 48 hours a week over four months.

Article 5 (breaks) of the Directive says that this provision will not prejudice the relevant provisions of Regulation (EC) No. 561/2006 on driving times and rest periods or the AETR Agreement.

Article 6 clarifies that apprentices and trainees shall be covered by the same provisions on rest time as other mobile workers in pursuance of Regulation (EC) No. 561/2006 on driving times and rest periods or the AETR Agreement.

A last reference to the Regulation is made by Article 13 of the Directive. There it is ensured that Member States hand in their report concerning Directive 2002/15/EC on the organisation of mobile workers in road transport by the same date as the one for Regulation (EC) No. 561/2006 on driving times and rest periods and that the reporting period is also the same.

1.4. *Transposition in the Member States*

The table below provides an overview of the national legal instruments that are transposing and implementing the Directive. Moreover, it provides an information whether the views of the two sides of the industry have been taken into account in the elaboration of the implementing measures and/or the national reports, as prescribed by Article 13 (1) of the Directive.

Member State	Transposition Measure	Date of Publication	Entry into Force	Date of Notification	Involvement of Stakeholders
Austria ⁷	Federal Law, by which the Working Time Law and the Law on rest periods are being amended	3.8.2006	11.4.2007	1.9.2006	No information submitted
Belgium	Law of 16 March 1971 on Labour Complementing Royal Decrees Collective agreements			5.9.2005 15.10.2005	No information submitted
Cyprus	Organisation of the Working Time of Persons performing Mobile Road Transport Activities Law of 2005 (Law 47(I)/2005)	6.5.2005		20.5.2005	No information submitted

⁷ The information was taken from the official notification of transposition by the Member State. Because of the non-submission of the report, the Member State is not being further taken into account.

Czech Republic	Government Regulation 589/2006 establishing a derogation relating to the working time and the rest periods of transport workers	27.12.2006	1.1.2007	3.1.2007	Trade unions and employers associations
Denmark	Act No 395 of 1 June 2005 (on working time for mobile workers within the road transport sector)	1.6.2005	1.7.2005	13.7.2005	Trade Unions Employers' organisations Organisations of regions and communities
Estonia	Traffic Act and Working and Rest Time Act		24.4.2005	20.4.2005	Employers: Union of Estonian Automobile Enterprises Employees: Estonian Transport and Road Workers' Union
Finland	Working Hours Act (605/1996) Collective agreements			15.3.2005	No information submitted
France	Decree 83/40 Decree 2003/1242 (as modified by Decree 2006/408) Ordinance 2004-1197 Decree 2005/306 Decree 2007/13			1.4.2005	Trade unions and employers associations
Germany	Workingtime Law (BGBI. Part I, p. 1170, 1171) Law of Proof of Substantial			1.9.2006	Employers: BdBV, ASL, ANV, BdO, BDE, BGL, AMÖ, VDV, DSLV, VSPV, BDI, BDA, VKA

	Conditions Applicable to the Employment Relationship (BGBl. Part I, p. 1542)				Employees: Berufskraftfahrer-Union Rheinland-Pfalz e.V, Ver.di, DGB
Greece	Presidential Decree 167/2006 (Government Gazette I 179,)	22.8.2006		8.9.2006	Conducted by Occupational Health and Safety Council
Hungary	Art. 18/A-J of Act I of 1988 Act LXXV of 1996			27.4.2005	Committee for the Dialogue in the public Transport Service Providers' Sector, Association of Hungary's Road Freighters, International Trade Association of Private Entrepreneurs, National Alliance of Transportation Entrepreneurs, Alliance of Mobile Road Transport Enterprises, Hungarian Chamber of Commerce and Trade
Ireland	European Communities (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2005 (S.I. No. 2/2005)	10.1.2006	2.1.2006	23.1.2006	None
Italy ⁸	Law No 77/2007 transposing	21.7.2007	22.7.2007	13.7.2007	No information

⁸ Transposition of Directive in 2007. The information was taken from the official notification of transposition by the Member State. Because of the non-submission of the report, the Member State is not being further taken into account.

	Directives 2004/39, 2002/98, 2002/15, 2004/25 Transposition of Directive 2002/15 on the organisation of the working time of mobile workers in road transport	17.12.2007		9.1.2008	submitted
Latvia	Road Traffic Law of 1 October 1997, Cabinet Regulation No 474 of 3 rd of July 2007	20.7.2007	21.7.2007	6.9.2007	No Information submitted
Lithuania	Art. 148 of the Lithuanian Labour Code, Government Resolution No 587 of 14 May 2003 (Official Gazette 2003, No 48-2120), Government Resolution No 543 of 17 May 2005 (Official Gazette 2005, No 64-2291)	21.5.2006 26.6.2002	21.5.2005 1.1.2003	25.5.2005 7.3.2005	None
Luxembourg ⁸	Law of 21 December 2007 on the transposition of Directive 2002/15/EC on the organisation of the working time of mobile workers in road transport and amendments to the Labour Code	31.12.2007	22.3.2008	8.1.2008	No information submitted
Malta	Motor Vehicles (Carriage of Goods) Regulations and Motor Vehicles (Carriage of Persons	9.6.2006 16.6.2006		21.7.2006	Association of Tractor and Trailer Operators (ATTO)

	Regulations)				
Netherlands	Decree on Working Time in Transport (Bulletin of Acts and Decrees of 11 th of December 2006)	11.1.2007	12.1.2007	15.1.2007	Trade unions and employers associations
Poland	Drivers' Working Time Act of 16 April 2004 Labour Code of 26 June 1974	30.4.2004 16.2.1998	1.5.2004	15.3.2005 31.8.2004	No information submitted
Portugal	Decree Law No 237/2007 of 17 June 2007, Order No 983/2007	19.6.2007		2.7.2007	No information submitted
Slovakia	Act No. 121/2004 Act No. 125 2006 Act No. 125/2006 Act No. 462/2007			17.3.2004 14.8.2008	Slovak Trade Union Confederation Federation of Employers' Associations of the Slovak Republic in the area of transport
Slovenia	Act on Working Time and Compulsory Rest Periods of Persons Performing Mobile Road Transport Activities and on Recording Equipment in Road Transport (OJ RS, No. 76/2005) Consolidated Text: OJ RS, No. 64/2007			24.4.2007	Chamber of Commerce and Industry of Slovenia Trade Union
Spain	Royal Decree 902/2007 of 6 July 2007	18.7.2007	7.8.2007	19.7.2007	Meetings with employer's organisations and trade unions

Sweden	Act 2005/395 on Working Time for certain Road Transport Activities (Road Transport Working Time Act)	13.6.2005		6.9.2005	Cooperation of Work Environment Authority (AV) with National Police Board, Road Administration, Road Transport Employers' Association and Transport Workers' Association
United Kingdom	In GB : Road Transport (Working Time) Regulations 2005 (SI 2005/639) of 4 April 2005. In NI : Road Transport (Working Time) Regulations (Northern Ireland) 2005 (SR 2005/241) of 16 June 2005	4.4.2005 16.6.2005		18.3.2005 20.5.2005 3.6.2005	Cooperation with trade associations and trade unions

One of the biggest problems concerning the application of Directive 2002/15/EC on the organisation of the working time of mobile workers in road transport was its non-uniform implementation into national legislation.

By the time of expiry of the transposition period (23 March 2005) only very few Member States had notified a complete transposition. Belgium, the Czech Republic, Denmark, Ireland, Greece, Spain, France, Italy, Latvia, Luxembourg, Netherlands, Austria, Portugal and Sweden only notified their national transposition measures after the launch of an infringement procedure by the Commission.

The Member States which indicated that they consulted the two sides of the industry, have precised the main elements of concern raised during the consultation process. Some employers' organisations feared possible negative effects of limiting the working hours by law, such as loss of income and increasing stress for drivers. Employees' organisations in some Member States criticised the national transposition legislation.

1.5. Monitoring and Enforcement in the Member States

The table below describes which bodies are being indicated by the Member States as responsible for the enforcement of the national legislation transposing the Directive.

Furthermore, it shows which methods are being applied in the Member States in order to ensure compliance with the provisions of the Directive.

Member State	Bodies Responsible for Implementation and Monitoring	Monitoring Methods/Enforcement
Austria ⁹		
Belgium	Labour Inspectorates	No information submitted
Cyprus	Minster of Labour and Social Security, Department of Labour Relations	Diversification of inspections to several units; checks at premises; List of vehicle owners; Vehicle owner information campaign
Czech Republic	State Labour Inspection Office [<i>Státní úřad inspekce práce</i>] and area labour inspectorates.	No information submitted
Denmark	National Police and Social Partners	No information submitted
Estonia	Labour Inspectorate National Police	Roadside checks and checks at premises
Finland	Occupational Safety Inspectorates	No information submitted
France	Labour Inspectors for Transport	No information submitted
Germany	Supreme authorities for labour protection in the "Länder" Bundesamt für Güterverkehr	Information campaigns; Roadside checks and checks at premises;
Greece	Ministry for Employment and Social Protection	Checks at premises; Audit to distinguish mobile workers from self-employed drivers

⁹ Member State did not supply data

Hungary	National Labour Safety and Labour Affairs Chief Inspectorate (regional inspectorates)	No information submitted
Ireland	Department of Transport; from Sep 06: Road safety Authority	No information submitted
Italy ¹⁰		
Latvia	Minister for Transport (Road Transport Inspectorate)	Roadside checks and checks at premises
Lithuania	No information submitted	No information submitted
Luxembourg ¹⁰		
Malta	No information submitted	No information submitted
Netherlands	Transport, Public Works and Water Management Inspectorate Labour Inspectorate	No information submitted
Poland	Road Transport Inspectorate Police Customs Officers Border Guards	No information submitted
Portugal ¹¹		
Slovakia	National Labour Inspectorate Labour Inspectorates Slovak Police Force	Roadside checks and checks at premises;
Slovenia	Minister of Transport; Labour Inspectorate of the Republic of Slovenia	No information submitted
Spain	Ministry of Labour and Ministry of Development;	No information submitted

¹⁰ Transposition of Directive in 2007; therefore Member State did not supply data

¹¹ Report does not cover the correct reporting period and is therefore not taken into consideration

Sweden	Work Environment Authority (AV) and national police	Supervision of the road transport working time act by checks at premises
United Kingdom	In GB: Department for Transport (DfT), Vehicle and Operator Service Agency (VOSA) In NI: Department of the Environment (DOE), Driver Vehicle Agency (DVA)	Checks at premises; checks are usually carried out following complaints (approach will be reviewed in 2009).

All Member States that submitted their reports, have indicated bodies responsible for enforcing national legislation implementing the Directive.

Only very few Member States submitted information on how they carry out controls. This is regrettable, as this information would have been very useful in order to better assess the effectiveness of measures taken by the Member States.

Only Greece, Latvia, Slovenia and the United Kingdom have submitted information concerning the establishment of systems to check the effectiveness of enforcement.

The **United Kingdom** commissions surveys and other supporting information to assess the effectiveness and impact of working time legislation. Figures from the Labour Force Survey (LFS) show that there has been a decrease in the total working hours of drivers since the entry into force of the Directive in 2005. It remains to be seen, whether this is a direct result of the Directive or whether it will become a continuing trend.

The audit by the Labour Inspection Corps in **Greece** is designed to distinguish false self-employed drivers from self-employed ones in order to more effectively detect the first ones.

In **Latvia** inspection reports contain recommendations for the operator.

Slovenia has set up a recording system and a record of measures being taken in administrative and administrative offence procedures.

1.6. Transmission of Data by the Member States

The lack of punctuality of many Member States in submitting their national reports was a major problem in writing this report.

By 30 September 2007, when all national contributions should have been submitted to the Commission according to Article 13 of the Directive, only Finland and the United Kingdom had submitted their reports. Cyprus, Sweden and Spain delivered their reports with a delay after a reminder, while the Commission had to launch infringement procedures against a majority of the Member States. The procedure against Austria was still open at the time of the writing of this report.

It is obvious, that this failure of most Member States to comply with their obligations to send a national report to the Commission is owed to the fact that some of them only notified the

implementation of the Directive at the end of or even after the expiry of the current reporting period. Only two Member States managed to transpose the Directive into national legislation by 23 March 2005, as it is prescribed by its Article 14. In the cases of Luxembourg, Spain and Portugal, the Court of Justice had to pass a judgement for not implementing the necessary measures within the time prescribed (C-364/06, C-392/06 and C-410/06).

1.7. Interpretation of Directive 2002/15/EC by the Court of Justice and National Courts

The ECJ did not pass any judgement relating to Directive 2002/15/EC on the organisation of working time of mobile workers in road transport during the reporting period.

As far as national cases are concerned, only Sweden (9 cases submitted to the public prosecutor), the Slovak Republic (several administrative procedures) and Slovenia (several administrative procedures leading to fines against undertakings for not keeping records of working time) reported their cases. The final outcomes of these proceedings were not reported.

2. DEFINITIONS

2.1. The Scope of Directive 2002/15/EC

According to its Article 2 (1), Directive 2002/15/EC applies to mobile workers employed by undertakings established in a Member State, participating in road transport activities covered by Regulation (EC) No. 561/2006 on driving times and rest periods or the AETR Agreement.

Article 3(d) defines a mobile worker as follows:

"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;"

Employed drivers, who can not be subsumed under these two Articles, are therefore out of the scope of Directive 2002/15/EC.

Self-employed drivers are not subjected to any of the two Directives.

According to the second and third sub-paragraph of Article 2(1) of Directive 2002/15/EC the Commission should send a report to the European Parliament and the Council by 23 of March 2007. This report should analyse the consequences of the exclusion of self-employed drivers from the scope of the Directive. It should furthermore be accompanied by a proposal to amend Directive 2002/15/EC on the organisation of mobile workers in road transport, either setting out the modalities for the inclusion of self-employed drivers or not to include them within the scope.

The issue of the scope of the Directive and the question, whether self-employed drivers should be included into the directive was only addressed by Denmark, France, Ireland, Finland and the United Kingdom.

Denmark wants self-employed drivers to remain out of the scope of Directive 2002/15/EC on the organisation of working time for mobile workers in road transport and is also sceptical

about the inclusion of false self-employed drivers. As far as self-employed drivers are concerned, it is being supported by Finland.

The **United Kingdom** welcomed the carrying out of an impact assessment on the inclusion of self-employed drivers.

France favours the inclusion of all self-employed drivers in the scope of the Directive as from 23 March 2009.

Ireland reported that the combat against false self-employed drivers will be a major task for the future.

2.2. Working Time

2.2.1. Provisions of the Directive

Article 3(a) defines working time as 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. On the one hand, this includes time devoted to all road transport activities, such as the following:

- driving
- loading and unloading
- assisting passengers boarding and disembarking from the vehicle
- cleaning and technical maintenance
- all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way

On the other hand "working time" also includes the times during which a mobile worker cannot dispose freely of his time and is required to be at his workstation, ready to take up his normal work, with certain tasks associated with being on duty, 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 average weekly working time may not exceed 48 hours. The maximum weekly working time may be extended to 60 hours only if, over four months, an average of 48 hours a week is not exceeded.

Working time for different employers is the sum of the working hours. Upon written request by an employer for an account of time worked for another employer, the mobile worker shall provide such information in writing.

2.2.2. Application in the Member States

The Directive foresees breaks and rest periods on the one side and working time on the other, but also an intermediate category, the "periods of availability".

These are 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 or,
- 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.
- Article 3 (a) of the Directive specifically notes that periods of availability are excluded from working time.

In **Hungary** working time consists of driving, loading and unloading, the time spent on assistance to boarding and disembarkment of passengers, the time spent on cleaning and maintenance of the vehicle and finally police, customs and border controls.

Times of availability are regulated more or less word by word as in the Directive.

Under **French** law, working time is defined as the time during which the employee is at the disposal of the employer and can not freely pursue his personal affairs.

The provisions concerning times of availability correspond to the Directive.

In **Belgium**, all times at which the employee is at the disposal of the employer, are counted as working time. That is to say that times during which a driver can not dispose freely of his time or has to be available on a continuous basis in order to be ready to start working, are counted as working times.

Times of availability, of which the driver can dispose freely and during which he is not meant to wait for unpredictable call to work, are not counted as working time.

In **Finland** the concept of working hours is being defined in principle as the time being spent on work in compliance with an employment contract or the time an employee is required to be at the employer's disposal, at work or any other place determined by the employer.

"Stand-by time" means an employees contractual obligation to remain at home or be otherwise available to be called to work when necessary and is not included in working hours.

Spanish law defines working time as periods, during which a mobile worker cannot dispose freely of his time and is required to be at his workstation ready to undertake his normal work and perform tasks associated with being on duty. Periods of awaiting loading or unloading,

where their foreseeable duration is not known in advance ("attendance time"), are included in working time.

Germany defines working time only as the period between the beginning and the end of work, excluding breaks. German jurisprudence recognises three types of time on duty: readiness for work, on-call service and stand-by. All of these periods are to be considered as working time.

In **Malta**, working time is considered to be 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. Concerning periods of availability, the same definition is used as in Article 3(b) of the Directive.

Under **Slovenian** law, working time means is defined as the time during which a worker is available to the employer and fulfilling his working obligations. Times of availability are not especially mentioned.

Lithuania's report unveils, that the provisions of the Directive have been transposed almost in a word by word manner.

Member States not mentioned did not supply enough content on this chapter.

2.3. Breaks

2.3.1. Provisions of the Directive

Article 5 of the Directive reads as follows:

"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, persons performing mobile road transport activities, without prejudice to Article 2(1), in no circumstances work for more than six consecutive hours without a break. Working time shall be interrupted by a break of at least 30 minutes, if working hours total between six and nine hours, and of at least 45 minutes, if working hours total more than nine hours.

2. Breaks may be subdivided into periods of at least 15 minutes each."

2.3.2. Application in the Member States

This provision appears in general to have been satisfactorily transposed. In accordance with Article 5, Member States generally set out minimum provisions for the length and timing of a rest break during the working day, in default of a different or more detailed provision under a collective agreement or between employers and workers' representatives.

2.4. Night Work

2.4.1. Provisions of the Directive

Article 3(i) of Directive 2002/15/EC on the organisation of working time of mobile workers in road transport defines night work as "any work performed during night time". Night time is

defined by paragraph (h) of the same Article as "a period of at least four hours, as defined by national law, between 00.00 hours and 07.00 hours".

Following Article 7(1), Member States shall take the necessary measures to ensure that, if night work is performed, the daily working time does not exceed ten hours in each 24 hours period and that 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.

The Commission's proposal to amend Directive 2002/15/EC on the organisation of working time of mobile workers in road transport, which has been published following Articles 2 (1), 7 (2) and (3) on 15 October 2008, intends to amend among others the provisions concerning night time. In the said proposal night work is defined as "work during a period of work which includes at least two hours work performed during night time".

2.4.2. *Application in the Member States*

According to the reports, the majority of the Member States transposed the provisions on night work in a satisfactory manner. Conclusions

All Member States have in the meantime transposed the Directive and from the information available it appears that most of them have done so in a correct manner.

However, in terms of night time provisions, there are some Member States, which in the opinion of the Commission did not transpose the provisions on night work correctly and are therefore subjected to infringement procedures¹².

Furthermore, the Commission has sent a Reasoned Opinion to the Netherlands for their transposition the provisions on maximum weekly working time .

3. GENERAL ISSUES

3.1. Member States' Evaluations and Prospects

As far as the scope of the Directive is concerned, **Denmark** supports the exclusion of self employed drivers. As a general rule, working-time rules are not adopted for the self-employed and major problems are foreseen by the Danish authorities in enforcing such rules, which they consider as being unnecessarily bureaucratic.

As far as the future inclusion of false self-employed drivers is concerned, Denmark is very sceptic, as it considers them to be already covered by the Directive.

Concerning enforcement, it is essential for Denmark that the controls required by the Directive can continue to be conducted by the two sides of industry. This is linked to the Danish implementation of the labour-market Directive, where the two sides have been given as much freedom as possible to implement the rules by agreement and they are responsible for enforcing them.

¹² Letters of Formal Notice have been sent notably to Spain and Germany.

For the **United Kingdom** the government is currently focusing on the effectiveness of its implementation of the Directive and anticipates that no change is needed to the Directive itself. As far as the inclusion of self-employed drivers is concerned, the carrying out of an impact assessment is welcomed.

As regards the prospects for the future, **Finland** considers it necessary to keep self-employed drivers out of the scope of the Directive, as driving times are already regulated by Regulations (EC) No. 561/2006 on driving times and rest periods and (EEC) No. 3821/85¹³. Furthermore, entrepreneurship should not be hindered too much.

National legislation in **France** does not provide for any definition for salaried or independent workers. It is therefore up to national courts to decide, whether a mobile worker is self-employed or not. In order to fish out false self-employed drivers, national courts apply the instruments designed to combat clandestine employment. In order to clarify the situation, the French authorities therefore favour the inclusion of all self-employed drivers in the scope of Directive 2002/15/EC.

The **Irish** report reveals that the combat against false self-employed drivers will be a major task for the future. Self-employed drivers and small companies dominate the domestic road transport sector. Many drivers seem to be under pressure by employers to become false self-employed. The investigation of those drivers has proved to be very demanding.

The **Netherlands** expect low compliance with the provisions of the Directive, due to the high economic pressure on the transport sector.

Germany regards Directive 2002/15/EC as an important component for the building of a more social Europe. Together with Regulation (EC) No. 561/2006 on driving times and rest periods, the provisions of the Directive contribute to increasing security and health of mobile workers.

Nevertheless it is reported, Directive 2002/15/EC is expected to be of minor importance compared to Regulation (EC) 561/2006 on driving times and rest periods, which is why the obligation to submit a biannual report on it is put into question. Alternatively, the reporting period should be adjusted to the one of the Basic Working Time Directive (five years).

Greece is of the opinion that Directive 2002/15/EC has reinforced the legal framework for mobile workers, further contributing towards tackling issues such as the definition of working time and limits for weekly working time. The Directive is seen as a very good set of agreements to be concluded in a favourable way.

Estonia reported that the transposition of Directive 2002/15/EC in road transport had not given rise to any new social problems and that there has been progress in the social dialogue between employers and workers.

In **Slovakia**, awareness of the existence of the Directive and the respective national legislation proved to be very low. Inspections revealed insufficient compliance on the part of employers with their obligation to provide information to transport employees of the relevant generally

¹³ Council Regulation (EEC) No 3821/85 of 20 September 1985 on recording equipment in road transport, OJ L 370, 31.12.1985, p. 8

binding legal provisions, employer's internal rules and agreements between social partners having impact on working times and rest periods.

Linked to that is the problem of a lack of awareness on the part of drivers of their own obligations.

Nevertheless, the Slovak authorities reported an improvement of the situation and expect a contribution of working time legislation to road safety.

In general, most Member States have expressed the view that it is too early to determine whether Directive 2002/15/EC has had an effect on the actual working time of mobile workers or not.

- Member States not mentioned did not supply enough content for this chapter. At this point it has to be commemorated that an outlook on issues concerning the Directive is a mandatory point according to the reporting format of Regulation (EC) 561/2006 on driving times and rest periods.

3.2. Social Partners' Evaluations

In **France**, trade unions appealed against French Decree 2007/13 on working time in road transport enterprises as far as the calculation period of the maximum weekly working time is concerned, claiming that the transposition was in contradiction to Article 10 of Directive 2002/15/EC, which allows for provisions more favourable to health and safety of persons performing mobile road transport activities to be passed by Member States.

On the contrary, employers' associations explicitly welcomed the Decree 2007/13 in that respect.

As far as the **United Kingdom** is concerned, employers' associations conceded that the Directive had not had such a negative impact on industry operating practices as they had feared. However, they attributed this to the fact that the United Kingdom had adopted most of the flexibilities provided by the Directive. Furthermore, they identified as a benefit that consultation and communication between employers and mobile workers improved.

Trade unions were unhappy with the inclusion of periods of availability in the Directive, which would undermine the protection provided.

Slovak social partners agreed with the national report in general. Some of the shortcomings detected could be removed on the basis of amendments to the legal provisions by defining more precisely certain problematic issues, such as stand-by duty.

Training of employees is seen as a major issue as well. Finally, they consider it necessary that employers draw up a timetable, which allows employees to observe the required rest periods.

Employers' organisations reported to provide information on the Directive and national implementation measures to their members. They nevertheless complain that approach of the Slovak authorities was discriminating, as only 3% of the undertakings controlled were non-nationals.

In **Spain**, the discussion between the social partners on the transposition of the Directive into national law was very problematic and at first it was not possible to reach a consensus on the

draft of a royal decree. This actually led to a serious delay of Spain's transposition of the Directive, which is why the Commission had to open an infringement procedure.

Spanish employer organisations were very negative about the Directive, especially because of the following points: exclusion of self-employed drivers, difficulties in interpreting the Directive, co-existence of Regulation (EC) No. 561/2006 on driving times and rest periods, and definition of rest periods. Additionally, there were some negative remarks on the national implementation measures.

Trade unions generally welcomed the Directive. Nevertheless they feared that the new proposal to amend the Basic Working Time Directive could contravene Directive 2002/15/EC on the organisation of working time of mobile workers in road transport and would represent a step backward in terms of maximum weekly working time. Additionally they would favour the inclusion of self-employed drivers, especially with regard to economically dependent self-employed drivers.

In the **German** report, stakeholders mainly commented on the national implementation measures. Employers claimed that the implementation measures have led to a significant reduction of legally possible working hours, which is contested by the German government.

In **Malta**, employers' organisations were particularly negative about the maximum weekly working time of 48 hours, as actual working hours had reduced, while drivers in Malta are being paid on a daily basis. Furthermore, they doubt the positive effects on health and safety, arguing that less working hours could mean more stress in the remaining ones.

Slovenian employers welcomed that Directive 2002/15/EC on the organisation of working time of mobile workers in road transport allows for greater flexibility in the organisation of the work of drivers in comparison to similar provisions for other workers in the country.

The trade unions were not satisfied with Slovenia's implementation measures in terms of working time and violations of working time legislation. Small and medium sized enterprises are said to be a matter of particular concern, as they usually do not pay salaries to drivers, but only remunerate them per kilometre driven. This again causes that drivers themselves do not comply with the rules.

Estonian social partners welcomed the Directive – even if some difficulties for employers were expected as regards training logistics for workers and various employers – as a contribution to better social protection and road safety, as well as to uniform competition conditions. The latter is expected because Estonian legislation includes self-employed drivers.

In **Sweden**, employers indicated that they had no special problems with the Directive, apart from the limitation to 10 hours of work, if night work is performed.

Employees' organisations expressed that the Directive was a step to the right direction, but that the transposition in Sweden was unsatisfactorily, without specifying their point.

The report by the **Netherlands** explains that the social partners expect basically negative impacts of the Directive: a loss in income because of reduced working hours, more investment by employers needed and finally drivers leaving the sector because of the decreasing attractivity and competitiveness of the sector.

Social partners in the Member States did not very often refer to the question of the scope of the Directive. Nevertheless, from the comments received the conclusion can be drawn that an inclusion of false-self employed drivers would be favoured.

The reports of the remaining Member States did not contain significant substance on this chapter.

3.3. Conclusions

Among the Member States that submitted their reports, substantiated data on the actual effects of the Directive were almost not available. This might be owed to the fact that it only came into force on the 23 March 2005 and most Member States only transposed it even later.

In many cases, the conclusions drawn by Member States on the effects of the Directive were reduced to expressions of expectation. Whereas some Member States, like Greece, expect it to make a valuable contribution, others, such as Germany, indicated that its importance could be minor in comparison to Regulation (EC) No. 561/2006 on driving times and rest periods.

Some Member States made reference to the question of whether or not to include self-employed or at least false-self employed drivers into the scope of the Directive. Only one Member State wanted the current Directive to remain unchanged, with the effect that all self-employed drivers are included into its scope as from 23 March 2009.

Social partners, even though they were not negative in most cases, have drawn the attention to elements of concern.

In some Member States employers expressed their concern that the Directive might lead to a reduction of the working hours permitted, which could cause a loss of income.

Some employees' organisations indicated that they were unhappy with the national transposition legislation, as they claimed that Member States did not make use of the possibilities offered by the Directive.

In Spain, the serious disagreement between the two sides of the industry lead to a considerable delay of Spain's efforts to transpose the Directive into national law.

Social partners in the Member States did not very often refer to the question of the scope of the Directive. Nevertheless, from the comments received the conclusion can be drawn that an inclusion of false-self employed drivers would be favoured with a view to fair competition in the road transport sector.