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**POSITION ON THE DRAFT REPORT OF THE EMPLOYMENT AND SOCIAL
AFFAIRS COMMITTEE ON THE PROPOSAL FOR A DIRECTIVE AMENDING
DIRECTIVE 2002/15/EC ON THE ORGANISATION OF THE WORKING TIME OF
PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES**

2008/0195(COD)

1. Introduction

The European Express Association (EEA) is the representative organisation for the express industry in Europe. The industry specialises in time-definite, reliable transportation services for documents, parcels, and freight. It allows European business to rely on predictable, expeditious delivery of supplies, thereby enabling them to attain and maintain global competitiveness.

The express industry employs over 250,000 people across the EU and supports a further 175,000 indirect jobs in Europe through the supply-chain. The express industry's employees are widely spread across the EU.

2. General comments

The EEA supports actions to **clarify the distinction between employed, self-employed and false self-employed**. This will protect employees and prevent unfair competition. In practice, the employment status of a driver cannot be determined on the basis of a single criterion. Instead, Member States competent bodies weigh several criteria and indicators according to the de facto situation to **identify "false self-employed" drivers**. Therefore, the proposal of the Commission to introduce **three cumulative criteria** is, in principle, the right approach.

Extending the scope of application of Directive 2002/15/EC to self-employed drivers is damageable, discriminatory and not enforceable. According to the Commission report¹, an inclusion will do economic harm, in particular to SMEs since an “inclusion will result in an increase in the cost burden and a reduction in working time, so the competitive advantage of the self-employed within the road freight industry will be substantially reduced. The larger firms would then be in a more competitive position as they could cope with reduced hours through efficiency measures.”

In no other sector, independents workers are limited by a working time legislation. Therefore, the EEA supports the Commission proposal and the draft report of the Employment and Social Affairs Committee of the European Parliament which exclude self-employed drivers from the scope of Directive 2002/15/EC.

Extending the scope of Directive 2002/15/EC to vehicles under 3.5t is inappropriate and will lead to enforcement problems. LCVs are used for a different business model than HCVs: they are usually used for pick-up and delivery services during day time in urban areas and imply short driving distances. The grounds such as road safety and health and safety of mobile workers which have justified specific working time rules for mobile workers in road transport sector are, therefore, not met for LCVs.

Furthermore, the inclusion of vehicles under 3.5t will miss the main concern for road safety which is the large number of occasional non-professional users who mostly lack sufficient training and experience with driving this type of vehicle.

Applying Directive 2002/15/EC to LCVs will create unnecessary administrative burdens especially for SMEs without bringing significant better social conditions since workers employed by transport undertakings already benefit from social basic protection provided for in Directive 93/104/EC². This social protection includes rules on adequate rest, the maximum average working week, annual leave and provisions on night workers and health assessment.

Finally, **there is no proven demand to change or further harmonise the night time provisions**, as the Commission report³ concluded. Therefore, any extension would be disproportionate. Instead, **the EEA supports the Commission proposal as a practical solution** with the definition of “night work” as being at least two hours worked (during the nationally defined four hour “night time” period-to be set within the hours between 24.00 – 07.00 h.). This would prevent drivers whose work accidentally falls for a short time into a night time period, become subject to night time work provisions.

In any case, night work should be extended accordingly if the night time is prolonged. Otherwise this would contradict the general working time directive 2003/88/EC which defines “night time” as a period of seven hours and work as ‘night work’ if it lasts longer than 3 hours.

¹ COM(2007)266 final, page 6.

² Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, OJ L 307, 13.12.1993

³ COM(2007)266 final, page 10.

Recommended voting list of amendments

Vote of the Committee on Employment and Social Affairs of the European Parliament on the Draft report dated 18.12.2009

+: positive advice

- : negative advice

0 : neutral

<i>Nr</i>	<i>Advice</i>	<i>Comment</i>
1	0	
2	+	Better enforcement is required in the implementation of the social rules of road transport.
3	+	
4	0	
5	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers is damageable, discriminatory and not enforceable. Allowing Member State to include self-employed drivers into the scope of Directive 2002/15 would create a patchwork of different rules and lead to a discrimination among self-employed drivers in the EU.
6	+	
7	-	Vehicles under 3.5t (LCVs) are used for a different business model than HCVs: they are usually used for pick-up and delivery services during day time in urban areas and imply short driving distances. The grounds such as road safety and health and safety of mobile workers which have justified specific resting and driving time rules for mobile workers in road transport sector are, therefore, not met for LCVs.
8	+	
9	+	
10	0	
11	0	
12	-	Too complex; the Commission's proposal is clearer.

13	-	
14	+	
15	-	Better enforcement is required in the implementation of the social rules of road transport.
16	-	The EEA supports the Commission proposal in general, and in particular the clarification given to identify self-employed and false self-employed workers. A withdrawal of the proposal is not the solution in regard to the problems revealed in the report and the impact assessment of the Commission.
17	-	Idem
18	-	Idem
19	-	The benefit of the additional bureaucracy is not clear. In accordance with the principle of “Better Regulation” any additional regulation should only be considered after a thorough impact assessment.
20	0	
21	+	Elimination of false self-employment should be facilitated
22	-	Due to the lack of data on the actual situation in the Member States, it cannot be concluded that the enforcement is weak in all Member States.
23	+	False self-employment should be eliminated to ensure a level playing field in the employment market.
24	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
25	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable. Road safety is ensured by Regulation No 561/2006/EC which applies to employed and self-employed drivers. It is not necessary to include self-employed into the scope of Directive 2002/15 for road safety reason.
26	-	Idem
27	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
28	0	

29	+	
30	-	
31	-	Unclear
32	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable. Road safety is ensured by Regulation No 561/2006/EC which applies to employed and self-employed drivers. It is not necessary to include self-employed into the scope of Directive 2002/15 for road safety reason.
33	0	
34	-	Unnecessary; there should be no discrimination between drivers regarding the enforcement of the social rules.
35	-	Vehicles under 3.5t (LCVs) are used for a different business model than HCVs: they are usually used for pick-up and delivery services during day time in urban areas and imply short driving distances. The grounds such as road safety and health and safety of mobile workers which have justified specific resting and driving time rules for mobile workers in road transport sector are, therefore, not met for LCVs.
36	-	Incompatibility with existing legislation and impossible to implement.
37	0	
38	0	
39	+	Vehicles under 3.5t (LCVs) are usually used for pick-up and delivery services during day time in urban areas and imply short driving distances. The grounds such as road safety and health and safety of mobile workers which have justified specific resting and driving time rules for mobile workers in road transport sector are, therefore, not met for LCVs.
40	-	Vehicles under 3.5t (LCVs) are usually used for pick-up and delivery services during day time in urban areas and imply short driving distances. The grounds such as road safety and health and safety of mobile workers which have justified specific resting and driving time rules for mobile workers in road transport sector are, therefore, not met for LCVs.
41	-	Unnecessary; description of the current situation

42	0	
43	0	
44	+	
45	0	
46	0	
47	+	Improve clarity of the text.
48	+	
49	0	In principle an exchange of data between competent national authorities could improve the enforcement of social rules in road transport but it should not lead to extra costs and administrative burdens for drivers and road transport operators.
50	-	Vehicles under 3.5t (LCVs) are usually used for pick-up and delivery services during day time in urban areas and imply short driving distances. The grounds such as road safety and health and safety of mobile workers which have justified specific resting and driving time rules for mobile workers in road transport sector are, therefore, not met for LCVs.
51	-	
52	0	
53	-	Unnecessary
54	-	Commission's text is clearer.
55	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
56	-	Proposed change is redundant.
57	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
58	-	Idem
59	-	Idem
60	+	

61 - 64	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
65	-	This directive concerns the organisation of working time and has nothing to do with wages which are influenced by a lot of factors other than the working time.
66 - 67	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
68	0	
69	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
70	-	This looks like an incorrect attribution of the amendment.
71	-	The proposed text is not clear and adds uncertainty.
72	-	The Commission text is more appropriate.
73	-	The proposed text is too complicated and impractical.
74-76	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
77	-	Too complex; the Commission's proposal is clearer.
78 - 81	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
82 - 87	-	The Commission's proposal on night work is a practical solution as demonstrated by the Commission's impact assessment.
88	0	
89 - 91	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
92 - 93	-	This directive concerns the organisation of working time and has nothing to do with wages which are influenced by a lot of factors other than the working time.

94	0	
95	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
96 - 100	-	The text of the Commission's proposal is preferred.
101	-	Extending the scope of application of Directive 2002/15/EC to self-employed drivers will be damageable, discriminatory and not enforceable.
102	-	The text of the Commission's proposal is preferred.
103	0	
104	0	
105	-	Unnecessary
106	0	
107	-	The text of the Commission's proposal is preferred.
108	-	The parties identified in the amendment have little or no possibility to ensure the required compliance.
109	-	Road transport undertakings already today have to respect social rules of transport according to Regulation (EC) No 1071/2009.
110 - 112	0	
113	+	