

Road transport, organisation of working time: mobile workers and self-employed drivers

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Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities came into force in March 2002. Member States have had three years to implement the provisions in relation to mobile workers. The Directive will apply to self-employed drivers as from March 2009. The Directive, however, requires the Commission to prepare a report on the Directive by March 2007 – i.e. two years before the Directive's provisions apply to self-employed drivers. The report should analyse the consequences of excluding self-employed drivers from the Directive's scope and what impact (if any) this has had on road safety, competition and the structure of the profession. In addition, the Commission is expected to assess the consequences of the Directive's night work provisions. In short, this report fulfils several objectives: it serves to provide an overview of the current state of implementation; it addresses the potential consequences of excluding self-employed drivers from the scope of the Directive and it assesses the consequences of the Directive's night time provisions.

Implementation in the Member States: the report finds that a majority of Member States did not manage to transpose the Directive into national law within the three year transitional period provided. In May 2005 the Commission was forced to open infringement proceedings against eleven Member States. Since then the number of Member States not communicating all their transposing measures has been reduced to four. The Commission is, therefore, not yet in a position to issue its first biennial report, due out in March 2007.

Consequences of excluding self-employed drivers: extensive research on working long hours and road safety, produced for the Commission, shows that excessive working hours is a major contributory factor to fatigue and hence to falling asleep at the wheel. Fatigue and its consequences for road safety can affect a driver, whether he be self-employed or a mobile worker. The consultants report confirmed that self-employed drivers work longer than mobile road transport workers. Other factors contributing to fatigue – stress, health problems and a lack of support were more prevalent amongst self employed drivers than mobile drivers. The inclusion of the self-employed in the Directive may have a positive effect on road safety albeit that the Commission accepts that is hard to quantify. Other factors such as age and fatigue may play an equally important role in promoting fatigue. The Commission also accepts that the new driving and rest time rules combined with stricter enforcement will play an equally valid role in minimising fatigue and stress.

In terms of the **social impact**, the Commission acknowledges that the balance of overall disadvantages and advantages of exclusion or inclusion is mixed. An increase of working hours for self-employed drivers (made possible by exclusion from the Directive) might be considered undesirable on health and safety grounds. On the other hand, inclusion may impose greater emotional stress and financial difficulty for the self-employed, be difficult to enforce, and ultimately be ineffective. To address this question a further impact assessment may be needed prior to any legislative proposal (see below). In any case, in a largely fragmented industry, it appears that exclusion of the self-employed from the scope of the Directive will tend to reinforce current trends – i.e. allow self-employed drivers to maintain their competitive edge within the industry. Addressing the issue of “false” self-employed drivers, therefore, must counteract any artificial fragmentation.

Night work: while there appears to be no demand to adjust the current provisions, the issue of enforcement is pertinent. The Commission will examine this matter further – together with the Member States and interest parties in a bid to assess how respect for night time rules can be applied.

Impact assessment: The Commission will now carry out a formal impact assessment in view of a legislative proposal modifying the Directive. The Commission will consult with the Member States and the social partners at a European level to examine further arrangements. The impact assessment will consider: i) the new Regulation on driving times and rest periods, the new enforcement Directive and the introduction of the digital tachographs; ii) encouraging active enforcement of enhanced operator conditions through a new proposal on admission to the occupation that is to be adopted in 2007 (this should help address the issue of “false” self-employed; and iii) focusing on a correct and enforceable application by the Member States of the Directive’s definition of mobile workers, which encompasses false self-employed drivers.

The Commission will also consider the continued exclusion of the genuine self-employed from the sectoral working time rules while at the same time ensuring a rigorous interpretation and implementation of the definition “self-employed” driver contained in the Directive so that the working time rules apply to the “false self-employed”.