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COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF IMPACT ASSESSMENT**

**Proposal for a directive of the European Parliament and of the Council amending
Directive 2002/15/EC on the organisation of the working time of persons performing
mobile road transport activities**

{COM(2008)650}
{SEC(2008)2632}

1. INTRODUCTION

This executive summary of the impact assessment report describes problems encountered with regard to the scope and enforcement of the legislation concerning persons performing mobile road transport activities and analyses the various policy options to deal with these problems.

Directive 2002/15/EC¹ establishes minimum requirements of working time of mobile workers in road transport in order to improve the health and safety protection, to improve road safety and to align conditions of competition. The Directive supplements Regulation (EC) No 561/2006² laying down rules on driving times and rest periods for drivers.

As part of the conciliation agreement the provisions of the Directive would apply from 23 March 2009 to self-employed drivers once the Commission presents a report and a consequent legislative proposal based on the report (Article 2(1) of the Directive).

The Commission report³ addressing potential consequences of the exclusion of self-employed drivers and assessing the night time provisions was presented on 23 May 2007.

The report confirms that the balance of overall disadvantages and advantages of inclusion or non-inclusion of self-employed drivers within the scope of the Directive is mixed and indicates the need for an in-depth impact assessment of the issue. Additionally, the report reveals a problem with effective and equitable enforcement of the rules.

2. PROCEDURAL ISSUES

The impact assessment builds on various studies and surveys carried out during 2003-2008 including two consultations with stakeholders as well as on regular contacts with Member States and social partners. It reflects the stakeholders' comments as well as contributions of the Inter-services Steering Group established for the purpose of this impact assessment.

The majority of stakeholders see negative and positive impacts. On one hand working time rules are regarded as having positive impacts on health and safety, working conditions and conditions of competition, but on the other hand they bring numerous negative side-effects such as loss of salary, shortage of drivers and increase in costs.

Stakeholders highlighted problems related to the enforcement of the working time rules and indicated that the existing weak system of controls does not ensure full compliance and they advocate for clarity of the scope of the Directive, effectiveness of enforcement, better cooperation between national authorities and prevention of the phenomenon of 'false' self-employed drivers.

The Impact Assessment Board treated the draft Impact Assessment in its meeting on 16 April 2008 and gave comments to improve the text in its opinions of 22 April 2008 and 26 June 2008 after a resubmitted Impact Assessment. The main comments concerned the lack of explanation of the relation of the specific working time directive with other applicable

¹ OJ L 80, of 23.3.2002, p.35

² OJ L 102, of 11.4.2006, p.1

³ COM(2007) 266 final

instruments, the need to strengthen the problem definition, the fact that initially none of the examined options was chosen and afterwards the need to define them more explicitly and the incompleteness of the analysis of social impacts. Taking into account of these comments, the relationship between different acts is explained, the problem definition has been made more precise, the policy options have been revised and the social impacts have been assessed in a qualitative manner for each option.

3. PROBLEMS IDENTIFIED

The main problem is the scope of the Directive as identified in its Article 2(1), namely whether self-employed drivers should be included in it and if yes, under which conditions. Usually the working time of self-employed persons is not restricted as this would limit their own entrepreneurial freedom. For this main problem the impact assessment is looking the economic, social, environmental and administrative impacts of different scenario of excluding and including the self-employed drivers in the scope of the directive.

An accompanying problem is the low level of compliance of a group of mobile workers, the so-called "false" self-employed drivers, which has several underlying causes: delays in transposition, unwillingness of some transport companies, misinterpretation of certain provisions and weak enforcement.

The Directive does not contain any specific provisions on the control of its application. Such situation differs from the control of driving times and rest periods, where Directive 2006/22/EC prescribes qualitatively and quantitatively the checks that Member States must undertake both at roadside and in the premises of undertakings. The Commission originally proposed that working time rules would be controlled under Directive 2006/22/EC, but the legislator did not adopt this approach.

Low compliance and weak enforcement is mainly related to the 'false' self-employed drivers. This category is composed of drivers that are formally self-employed, but who work regular hours for the same undertaking without the freedom to provide services to other parties. It is not explicitly defined in the Directive, but as these drivers do not satisfy the criteria of a 'self employed driver', they should be subject to the same obligations and benefits as mobile workers. However, a number of drivers and companies do not apply correctly this distinction.

Road safety concerns due to driver's fatigue are prevented by strict enforcement of driving time and rest period rules that apply to all drivers, regardless their employment status. Therefore the additional effect of the Working Time Directive is not significant for road safety.

All these problems undermine the Community rules and jeopardize the achievement of the key policy objectives of the Directive.

4. OBJECTIVES

The general objective justifying the EU action is the review of the scope of the directive and the compliance with the rules. This will be achieved by:

- clarifying the scope of the Directive with regard to self-employed drivers,

- making clear distinction between self-employed drivers and those drivers who should be treated as employed mobile workers for the purpose of the Directive,
- improving effectiveness of enforcement,
- reinforcing cooperation between Member States in order to ensure common application of the rules,

5. POLICY OPTIONS

Four policy options were identified: three of them deal with the scope of the Directive and one with enforcement.

Option A: "do nothing". This option does not involve any action by the European Parliament and by the Council, but it would not mean maintaining the *status quo*. Only the execution of conditions specified in Article 2(1) of the Directive, namely adoption by the Commission of a report and a consequent legislative proposal, would result in automatic inclusion of self-employed drivers within the scope of the Directive as of 23 March 2009.

Option B: Extending the scope of the Directive by including all self-employed drivers, except for self-employed drivers that are only performing national transport. This option provides for including only self-employed drivers performing international transport in the scope of the Directive. This option would require revision of the Directive with regard to its scope. All other provisions would remain unchanged.

Option C: Enhanced enforcement of the Directive with modalities to ensure the inclusion of "false self-employed" into the scope while keeping the genuine self-employed workers out of the Directive. This option provides for inclusion of the so-called "false self employed" in the scope of the Directive by providing for clarification of certain provisions and adding control requirements.

Three sub-options have been considered:

C.1: legal clarification within the framework of the Directive. This sub-option envisages clarification to the definition of mobile worker, which encompasses 'false' self employed drivers so that no room for interpretation is left. This option could also involve publishing guidance notes in order to ensure harmonised interpretation of definitions.

C.2: administrative measures imposing full enforcement together with clarification of the categories "self-employed driver" and "mobile worker". This sub-option envisages the introduction of administrative measures to enhance efficiency and effectiveness of the enforcement. This would require a revision of the Directive with a view to modify the definition of "mobile worker" as in option C.1 and to introducing requirements concerning cooperation to ensure equitable application of the rules and full compliance throughout the Community.

C.3: 'phasing-in' for 'false' self-employed. This sub-option envisages modalities for the inclusion of the 'false' self-employed workers by clarification of the definition of mobile worker in the first phase (years 2009-2011) and by introducing from 2011 onwards control requirements. This would involve a revision of the Directive as in C2 with a timeline for implementation.

Option D: Complete exclusion of self-employed drivers. This policy option provides for full exclusion of self-employed from the scope of the Directive. It reflects the existing situation, when self-employed drivers are at least temporarily excluded and it does not generate any changes in terms of impacts with relation to the current situation. Hence, this option is referred to as the base case scenario against which the other options have been measured.

It must be remembered that, regardless of the decision on inclusion or non-inclusion of self-employed drivers within the scope of the Directive, self-employed drivers are subject to driving time, break and rest period rules established by Regulation (EC) No 561/2006.

The impacts of policy options A, B, C were analysed against the current situation in option D. Economic, social, environmental and administrative impacts of four main policy options have been analyzed in respect of policy objectives of competition, social conditions and compliance with the rules.

6. COMPARISON OF THE OPTIONS AND CONCLUSIONS

Option D

This option has not been chosen due to the problem of low compliance by "false" self-employed drivers. This problem would remain and even increase given the weakness of enforcement, differences in application of the rules and continuous lack of clear distinction between genuine self-employed excluded from the rules and 'false' self-employed who fall in the scope of the Directive. This would further lead to undermining the policy objectives.

Option A

This option would provide for level playing field in terms of social rules for all persons engaged in mobile road transport activities. However, this does not translate into enhancing fair competition, as due to the reduction of working hours and a consequent decrease of income, the great majority of self-employed drivers would not be able to continue with their business. This would have disruptive effects on entrepreneurship development as well as on the position of the sector in countries with a high share of self-employed. Large companies would gain competitive advantage and take over market shares as they are better suited to cope with reduced working hours by economies of scale, while small and medium-sized enterprises would lose. Those self-employed who would remain in the business could be tempted to take on another job to compensate for the lost income or to try to work more intensively to maintain at least a majority of the current turnover. This would consequently result in a higher work-related stress and fatigue. The phenomenon of 'false' self-employed would become irrelevant, but the compliance rate would not improve and is likely to decrease, given the more numerous group covered by the rules coupled with weak enforcement and a general low compliance discipline of "false" self-employed drivers. Companies would also increase their operating and administrative costs by having to recruit additional drivers in order to maintain the same amount of freight transport services. The increased demand for additional drivers may also lead to a shortage of professional drivers and consequently to an unsatisfied market demand for freight transport services. The enforcement would become more difficult with regard to controlling working time of self-employed drivers as they do not record working hours for salary purposes.

Option B

Inclusion of self-employed drivers in international transport would ascertain level playing field among international hauliers, but would not lead to noticeable improvement of compliance rate or reduction of the number of 'false' self-employed and does not improve the effectiveness in achieving policy objectives with insignificant impacts.

Option C.1

By providing for a better distinction between drivers in scope (employed mobile workers and 'false' self-employed) and out of scope (genuine self-employed), C.1 would contribute to a reduction of the 'false' self-employed phenomenon, but this reduction would be limited to the number of those drivers who disobey the rules due to misinterpretation and would not eliminate those 'false' self-employed, who deliberately ignore the rules counting on low effectiveness of controls. The impact on improving compliance level as well as achieving policy objectives is minimal.

Option C.2

This option would combine the better distinction between drivers as presented in option C.1 with requirements to enforce the rules in a harmonised way. It involves some administrative costs to be borne by Member States related to effective enforcement. These costs would be offset by benefits stemming from an increased level of compliance to the rules and better achievement of policy objectives. Companies would face slightly higher administrative costs due to recruiting of additional drivers related to elimination of 'false' self-employed drivers. Outsourcing by large companies would result in increase of turnover of genuine self-employed drivers. This would enhance attractiveness of the profession and stimulate the creation of new entrepreneurs. The distortion of competition between those employed drivers who comply with the rules and non-salaried drivers ('false' self-employed) who disobey the law would be prevented. The competitive position of genuine self-employed would not be put at stake by 'false' self-employed, who today benefit from unlimited working time (with all its consequences), but do not bear the responsibilities and risks related to running their own business. The effectiveness in reducing the phenomenon of 'false' self-employed and consequently in solving the compliance problem is the highest of all options.

Option C.3

This option combines measures proposed in previous sub-options C1 and C2 with a timeline and its impacts (positive and negative) are very similar to those of C2, with some figures only insignificantly higher or lower. The results are expected to materialize later than in C2 and the problems would be solved at a later stage.

Comparison of compliance costs

The results of cost-benefit analysis show that option A is the most costly imposing the highest costs to Member States related to enforcement and to the private sector related to recording and reporting of working time. Option A is also the most difficult to enforce, as it is almost impossible to verify the reliability of working time records done by self-employed drivers as working hours are not registered for salary purposes. Hence the costs incurred to improve the level of compliance may not be proportionate to the results achieved. The least costly is option D as it does not involve any new action. However, it results in high non-compliance

costs as it does not solve the problem of compliance by "false" self-employed drivers. Option B is the cheapest in administrative costs for businesses and almost as pricy as options C in terms of enforcement costs. However, it does not significantly improve the situation with regard to the phenomenon of 'false' self-employed. Option C.2 is less costly than option A and slightly more expensive than option B. However, its effectiveness in reducing the phenomenon of 'false' self-employed and improving compliance in the field is the greatest.

Conclusions

When assessing impacts of different policy options as well as their compliance costs, it can be concluded that C.2 is optimal. A, B and C1 dealing with the scope of the Directive do not solve the problem of compliance and do not lead to better achievement of policy objectives, whereas C3 leads at the later stage to the results of C2. Option C2, focusing both on the definition and enforcement measures, is the most effective in addressing the problems and achieving policy objectives.

The proposal directly addresses the underlying causes of the problem of low compliance by ensuring the inclusion of 'false self-employed' and by more effective enforcement. Therefore it is concluded that the current working time rules combined with enhanced clarity of the scope of the Directive and accompanied by clear enforcement rules will reduce distortion of competition and enable better social protection of workers and assimilated groups.