DIRECTIVE 2002/15/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 March 2002
on the organisation of the working time of persons performing 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 Article 71 and Article 137(2) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3], and in the light of the joint text approved by the Conciliation Committee on 16 January 2002,

Whereas:

(1) Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport [4] 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 [5] 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.

(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 in accordance with the provisions of Article 2(1).

(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.

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[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 23 March 2001 (OJ C 142, 15.5.2001, p. 24) and Decision of the European Parliament of 14 June 2001 (not yet published in the Official Journal). Decision of the European Parliament of 5 February 2002 and Council Decision of 18 February 2002.
[4] OJ L 370, 31.12.1985, p. 1.
[5] OJ L 307, 13.12.1993, p. 18. Directive as last amended by Directive 2000/34/EC of the European Parliament and of the Council (OJ L 195, 1.8.2000, p. 41).

(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.

(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 performing 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.

Without prejudice to the provisions of following subparagraph, this Directive shall apply to self-employed drivers from 23 March 2009.

At the latest two years before this date, the Commission shall present a report to the European Parliament and the Council. This report shall analyse the consequences of the exclusion of self-employed drivers from the scope of the Directive in respect of road safety, conditions of competition, the structure of the profession as well as social aspects. The circumstances in each Member State relating to the structure of the transport industry and to the working environment of the road transport profession shall be taken into account. On the basis of this report, the Commission shall submit a proposal, the aim of which may be either, as appropriate

— to set out the modalities for the inclusion of the self-employed drivers within the scope of the Directive in respect of certain self-employed drivers who are not participating in road transport activities in other Member States and who are subject to local constraints for objective reasons, such as peripheral location, long internal distances and a particular competitive environment, or

— not to include self-employed drivers within the scope of the Directive.

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

3. In so far 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.

Article 3

Definitions

For the purposes of this Directive:

(a) 'working time' shall mean:

1. in the case of mobile workers: 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:
     (i) driving;
     (ii) loading and unloading;
     (iii) assisting passengers boarding and disembarking from the vehicle;
     (iv) cleaning and technical maintenance;
     (v) 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, including monitoring of loading and unloading, administrative formalities with police, customs, immigration officers etc.,
   — the times during which he cannot dispose freely of his time and is required to be at his workstation, ready to take up 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;

2. in the case of self-employed drivers, the same definition shall apply to the time from the beginning to the end of work, during which the self employed driver is at his workstation, at the disposal of the client and exercising his functions or activities other than general administrative work that is not directly linked to the specific transport operation under way.

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 main place of business of the undertaking for which the person performing mobile road transport activities carries out duties, together with its various subsidiary places of business, regardless of whether they are located in the same place as its head office or main place of business,

— the vehicle which the person performing mobile road transport activities 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 transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out the aforementioned transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to, individually or through a cooperation between self-employed drivers, have commercial relations with several customers.

For the purposes of this Directive, those drivers who do not satisfy these criteria shall be subject to the same obligations and benefit from the same rights as those provided for mobile workers by this Directive;

(f) 'person performing mobile road transport activities' shall mean any mobile worker or self-employed driver who performs such activities;

(g) 'week' shall mean the period between 00.00 hours on Monday and 24.00 hours on Sunday;

(h) 'night time' shall mean a period of at least four hours, as defined by national law, between 00.00 hours and 07.00 hours;

(i) '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 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. 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, in so far as the drivers concerned do not exceed an average working time of 48 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, 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.

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 24 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 23 March 2007, 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, for objective or technical reasons or reasons concerning the organisation of work, be adopted by means of collective agreements, agreements between the social partners, or if this is not possible, by laws, regulations or administrative provisions provided there is consultation of the representatives of the employers and workers concerned and efforts are made to encourage all relevant forms of social dialogue.

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) without prejudice to Article 2(1), the working time of persons performing mobile road transport activities is recorded. Records shall be kept for at least two years 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.

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 persons performing mobile road transport activities, 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. Implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers referred to in Article 2(1).

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.

[1] OJ L 288, 18.10.1991, p. 32.

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 23 March 2005 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.

2. 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.

3. Member States shall take care that consignors, freight forwarders, prime contractors, subcontractors and enterprises which employ mobile workers comply with the relevant provisions of 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 Brussels, 11 March 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	J. PIQUÉ I CAMPS