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CONSULTATION DOCUMENT

First phase consultation of the Social Partners under Article 154 of TFEU on a possible revision of the Road Transport Working Time Directive (Directive 2002/15/EC)

1. INTRODUCTION

The aim of this Consultation document is to seek the views of the social partners at European Union level, in accordance with Article 154 of the Treaty on the Functioning of the European Union (TFEU), on the possible direction of EU action regarding Directive 2002/15/EC¹ (the Road Transport Working Time Directive) which is based on Article 91 (1) and Article 153 TFEU.

The Road Transport Working Time Directive lays down rules on the organisation of the working time of road transport mobile workers, including drivers. According to its Article 1, the purpose of the Directive is 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.

Over the last few years, the effectiveness of the Directive has been questioned on several grounds. Some of its provisions have lagged behind rapid changes in working patterns, making it less suited to workers' and operators' needs. Moreover, difficulties and discrepancies in the implementation and enforcement of some provisions have led to legal uncertainty and low compliance to the detriment of working conditions of mobile workers. Therefore, in the context of the ongoing broader review of the road transport legislation² under the regulatory fitness (REFIT) programme, the Commission finds it opportune to review the Directive in accordance with the principles of better regulation.

The Commission intends to concentrate on key problem areas identified during ex-post evaluation and various stakeholder consultations. It invites the social partners to reflect on the key issues outlined here and to suggest appropriate means of addressing them effectively and efficiently.

2. SOCIAL RULES IN ROAD TRANSPORT

From 1969³ onwards the Union has developed an extensive framework of social rules applying to the road transport sector. These rules are aimed at improving drivers' working conditions, enhancing road safety for all road users and ensuring fair competition between road transport operators in the single market. They apply to all professional drivers (employed and self-employed) and all transport undertakings involved in the carriage of goods using vehicles above 3.5 tonnes or in the carriage of passengers by vehicles for more than nine persons.

The Road Transport Working Time Directive is a fundamental part of the Union's social rules applying to road transport. Its provisions on maximum working time supplement the rules of Regulation (EC) No 561/2006⁴ (the Driving Time Regulation) on drivers' weekly and daily driving times, breaks in driving and daily and weekly rest periods. It

¹ 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 (OJ L 80, 23.3.2002, p.35);

² http://ec.europa.eu/transport/modes/road/road-initiatives_en

³ With the adoption of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonisation of certain social legislation relating to road transport, (OJ L 77, 29.3.1969, p.49-60)

⁴ Regulation (EC) No 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 (OJ L 102, 11.4.2006, p. 1)

takes precedence over the general Working Time Directive 2003/88/EC⁵ insofar as it contains more specific provisions applying to mobile workers in the road transport sector.

Unlike the Driving Time Regulation, the Road Transport Working Time Directive is not covered by uniform EU-wide requirements as regards enforcement⁶. Enforcement is primarily the responsibility of Member States, which are required to ensure correct implementation and application of the national measures transposing the Directive.

3. WORKING TIME RULES AND MARKET CHALLENGES

Since the time limit for the transposition of the Road Transport Working Time Directive expired in 2005, fundamental changes have occurred in terms of employment and business arrangements, which have had an impact on the overall length and patterns of working time. In particular, the increased internationalisation of transport operations, the proliferation of operational bases and long sub-contracting chains have put the working time of mobile workers under considerable pressure, and made it more difficult to control or monitor.

On the one hand, operators need flexibility to arrange the working time of drivers and possibly other mobile workers in order to respond to seasonal and market fluctuations and improve their firm's ability to compete. On the other hand, disruptive working patterns, time pressure and excessive working hours have negative effects on the mobile workers' health and safety, as well as on road safety, insofar as drivers are concerned.

In particular, increasingly fierce cost-based competition has driven operators to improve their margins by reducing operational costs or even circumventing the working time rules. Inevitably, this works to the detriment of the mobile workers' working conditions.

4. OBJECTIVES OF A REVIEW OF WORKING TIME RULES

Market developments in road transport and the associated social challenges call for adaptation of the legal framework at both EU and national levels. This review is necessary not just to protect workers' health and safety but also in relation to the two other objectives referred to in Article 1, namely to improve road safety and to align conditions of competition.

Account should also be taken of other EU legislation contributing to these objectives, in particular the Driving Time Regulation based on the Union's rules on transport policy.

Finally, in line with one of its legal bases - Article 153 (2) of TFEU - and also with the principles of better regulation, any review *"shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertaking"*.

5. KEY ISSUES IN THE APPLICATION OF THE DIRECTIVE

Together with the Driving Time Regulation and Directive 2006/22/EC⁷ (the Enforcement Directive), the Road Transport Working Time Directive, was subject to a comprehensive

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

⁶ Compliance with the Driving Time Regulation is checked under Directive 2006/22/EC (minimum level of compliance checks), see footnote 8

⁷ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

ex-post evaluation carried out in 2015-2017⁸. The evaluation was supported by an external study⁹ and based on a number of separate stakeholder consultations, including an open public consultation¹⁰, targeted consultations of the social partners and an SME Panel Survey¹¹. The main issues that emerged as regards the Road Transport Working Time Directive, are presented below.

(a) Working hours

Overall, average weekly working hours in the EU are below the 48-hour limit established in the Directive. However, some road transport mobile workers work longer average working hours, ranging from 49 to 62 hours per week.

This is in particular the case of long distance international drivers. The ex-post evaluation study showed that 40% of drivers across the EU regularly work more than the allowed maximum average of 48 hours per week. The survey carried out among some 2000 drivers in Germany showed that 90% of drivers exceed the maximum average working time¹².

There is also a specific issue of workers with more than one employment contract, who may work in excess of 48 hours for the same or different employers (sometimes outside the road transport sector).

Non-compliance with the working time limits is largely a result of weak enforcement. A survey among national enforcement authorities carried out as part of the study confirmed the problems with monitoring compliance with working time rules. Almost half the authorities that responded regarded checks as being insufficiently frequent. The main obstacle was the excessive time needed to detect infringements, mainly because:

- the average weekly working time is calculated over a long reference period of four months, which can even be extended to six months (see below), and
- the completeness of work records depends on the driver correctly using a switch mechanism in the tachograph to record 'other work' i.e., work other than driving, which the tachograph records automatically.

(b) Flexibility in the averaging of weekly working hours

Flexibility in the distribution of working hours over time is an important competitive factor in the road transport sector, which is subject to fluctuations in the activity cycles due to changing market and seasonal demands.

The Directive is designed to allow for some flexibility when calculating the 48-hour limit – hence the four-to-six month reference period. However, such a long reference period for calculating average working time encourages working patterns involving long-hours worked over a prolonged period, which (although this might well be in compliance with the Directive) may lead to negative consequences for health and safety of mobile workers in general and, because of accumulated fatigue of drivers, pose risks to road safety. In this latter respect, it shall be recalled that, according to research, fatigue and loss of

⁸ http://ec.europa.eu/transport/modes/road/road-initiatives/fair-competition-workers-rights_en

⁹ <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

¹⁰ http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road_en

¹¹ <https://ec.europa.eu/transport/sites/transport/files/2016-social-legislation-road-specialised-summary-sme-panel.pdf>

¹² see 2014 study by ZF Friedrichshafen, for which 2,196 professional German drivers were consulted

concentration increase with a number of hours worked and the risk of accidents is higher during the final hours of work.

The challenge is to [adequately protect workers' health and safety while taking into account operators' legitimate interests and needs for flexibility](#).

The long reference periods also render it effectively impossible to monitor compliance at the roadside (where tachograph records for up to 29 days only are available) and checks at undertakings' premises are very time-consuming and resource-intensive. Where mobile workers have multiple employers and multiple working time records, verifying the records becomes even more challenging.

(c) Availability periods

The ex-post evaluation study has shown that the enforcement of 'availability periods' differs both within and between Member States. In particular, the definition of different activities has given rise to difficulties. For example, operators and drivers classify some activities as "availability", when these activities in fact should have been classified as 'other work'. Some mobile workers indicate that they are "available" during the unloading/loading of their vehicle while being requested or strongly encouraged to stay at the workstation.

In addition, the majority of enforcement authorities consulted reported that for the purposes of enforcement one main difficulty consists in distinguishing - and monitoring - periods of 'work', 'other work' or 'periods of availability'. This potential misuse of 'periods of availability' is frequently the reason for long working hours.

6. NEXT STEPS

This Consultation document constitutes the first phase of the procedure set out in Article 154(2) TFEU. In this phase the Commission is looking for the social partners' views as to whether EU-level action on the Road Transport Working Time Directive is needed and on the scope of such an initiative.

The Commission will examine the views expressed during the first phase and decide whether EU action is advisable. Should this be the case, the Commission would launch a second-phase consultation of the social partners at EU level. That phase will cover the content of any proposal for action, in accordance with Article 154(3) TFEU.

The questions on which the Commission proposes to consult the social partners are:

- 1) Do you consider that the Commission has correctly and sufficiently identified the issues and possible areas for further EU action in section 5?

Are there any other issues which you consider should be added?

- 2) Do you consider that the Commission should launch an initiative to amend the Directive? If so, do you agree with the objectives and scope of a review as set out in this paper? If not, what other form of action should be taken and on what issues?
- 3) Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation pertaining to health and safety and the working conditions of workers as such?