

## Opinion of the United Services Union ver.di, Federal Office, Berlin

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### Topic:

What are the consequences if self-employed commercial vehicle drivers are not covered by the provisions of the EU Working Time Directive?

or:

What are the arguments supporting the view that adherence to Regulation (EC) 561/2006 (driving time and rest periods) is in itself not sufficient in the case of self-employed commercial vehicle drivers?

### General

Seven years ago, European legislators were of the opinion that there was a need for minimum working time requirements aimed at improving the safety and health of commercial vehicle drivers and creating fairer competition in the road transport sector.

This intention was effectively realised in the form of Directive 2002/15/EC, which was to apply to all drivers from March 2009.

In the seven years since then, traffic on Europe's roads has reached unprecedented levels, and this has further exacerbated distortion of competition in the sector. Furthermore, the health and lives of fatigued drivers, and therefore of all road users, is being unnecessarily put at risk on a daily basis.

Although the EU Commission does not fundamentally question these aspects in its report, its proposal for a revision of the Directive ignores the fact that in addition to the regulated driving time, a driver in the road transport sector also has to carry out a large number of tasks that add to the stress caused by the act of driving itself (e.g. loading and unloading, waiting times, administrative work etc.)

### Competition

The current proposal from the EU Commission makes it possible for self-employed drivers to have a working day of up to 15 hours, as it is only Regulation (EC) 561/2006 on driving and rest times that specifies maximum driving times and minimum rest times.

If the self-employed driver is driving a vehicle of less than 3.5 t, then even these restrictions on drive and rest times do not apply (unlimited working hours).

In Germany there are currently some 54,000 companies in the commercial freight transportation sector, of which 57% are small firms with between 3 and 5 employees. This indicates that there is a high proportion of "owner-drivers". The business strategy of major logistics companies is to outsource transportation to small sub-contractors, which are frequently one-man companies formally managed by self-employed drivers. The low cost competition that this triggers results in dumping prices and overly long working times. The inclusion of self-employed drivers in the scope of the Working Time Directive at least prevents such dumping in the case of working times. Only if conditions are equal can a self-employed sub-contractor be paid prices that are compatible with current social regulations. If the regulations are not applied across the board, then even employers who conform to the law are affected, as they are forced out of the market.

This results in distortion of competition, and it is the drivers who suffer – particularly self-employed or pseudo self-employed drivers, who are expected to provide a round-the-clock service. Differences between member states regarding wage structures, tax and social policy are already being exploited in order to gain a considerable competitive advantage. Exploiting differences in the application of drivers' working times would mean further distortion of competition.

Drivers who are employees can work 48 hours per week on average over a four month period, with a maximum working week of 60 hours. If preparatory work as described above is included, then a self-employed driver can work up to 38 hours a week longer than an employed one. This is particularly relevant in the case of local or regional road freight transportation – which usually takes place on roads with the highest accident risk. The Commission's proposal offers no guarantee that this sort of unfair competition would not be exploited in the case of the self-employed. It can be regarded as certain that if the Directive is passed without its scope being extended to cover all drivers, this will open the floodgates to exploitation of the pseudo self-employed. If the regulations do not apply equally to all commercial vehicle drivers, then the prospect of competition based on a level playing field in the transport sector fades into the far distance.

The resulting consequences for the health of drivers and the safety of road users are accepted without question.

### **Working conditions and the health of commercial vehicle drivers**

It is generally regarded as scientifically proven that the risk of serious work and traffic accidents begins to increase from the 8th hour onwards and rises sharply after the 9th hour. If these working hours are spent behind the wheel, then the result is also increased danger for all road users. In addition to driving for the full amount of time permitted, self-employed drivers in particular also have to carry out a range of additional tasks as well as driving for as long as the regulations permit.

Overall daily working hours (minus rest times) can thus come close to the limit of 15 hours. It is also a proven fact that normal psychological and physical performance drops to less than 60% after 8 o'clock in the evening, and can only briefly increase to 80% under extreme conditions. The consequences are: careless driving, "nodding off" at the wheel, total exhaustion and increased risk for all road users. Extension of the Working Time Directive to cover self-employed drivers would improve this situation as the upper limits would also apply to them, and driver fatigue would be kept to a minimum.

### **Safety on European roads**

If, as described above, self-employed or pseudo self-employed drivers are forced to accept longer daily working times, this not only increases the danger and health risks for drivers but also the dangers for other road users.

Generally-speaking the pressure of deadlines, combined with crowded motorways, exposes many drivers to long-term stress. In Germany, the body responsible for traffic checks on road freight, the Federal Office for Freight Transport (Bundesamt für Güterverkehr - BAG), has described the level of infringements with regard to general road safety as alarming (BAG Market Observation 2009). The BAG has also found that infringements of social regulations are a significant factor in serious road accidents. Regular evasion of existing regulations results in excessive strain on drivers. A research report published by the European Transport Safety Council (ETSC) back in 2001 found that driver fatigue played a significant role in 20% of road freight transport accidents in Europe. 50% of commercial vehicle drivers surveyed had fallen asleep at the wheel on long-distance trips. In Europe, well over 40,000 people die as a

result of road accidents every year. For commercial vehicle drivers, the roads are their main workplace. Working time plays a crucial role and is closely linked to accident risk. Safety aspects must not be sidelined in favour of a commercial logic which states that freight and passenger transportation must be flexible and available at all times, even if this involves worsening the working conditions of the drivers involved.

Only consistent regulation of working time for all commercial vehicle drivers in Europe can contribute towards ensuring that competition takes place on equal terms and working conditions are improved for employee and self-employed drivers – in particular with regard to their physical and psychological well-being. Social regulations must ensure that all those working in this field are treated equally, irrespective of whether they are employed or self-employed. And social aspects must include not just health and working conditions but also work-life balance – and thus the compatibility of family life and occupation. In a European context there must be a balance between economic factors and socially acceptable working conditions.

In terms of social policy, extension of the scope of the Working Time Directive to include all commercial vehicle drivers represents a responsible approach to improving the safety of all road users in Europe.