

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.7.2006
COM(2006) 371 final

REPORT FROM THE COMMISSION

On the operation of the provisions of Directive 2003/88/EC (organisation of working time for workers concerned with the carriage of passengers on regular urban transport services)

REPORT FROM THE COMMISSION

On the operation of the provisions of Directive 2003/88/EC (organisation of working time for workers concerned with the carriage of passengers on regular urban transport services)

1. INTRODUCTION

1.1. Legal context

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 (afterwards referred to as "the Directive")[1] [2], lays down minimum safety and health requirements for the organisation of working time of workers[3], covering periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work.

The Directive applies to all sectors of activity, both public and private[4], except where other Community instruments contain more specific requirements on the organisation of working time for particular occupations or occupational activities[5]. There are currently four such instruments[6], of which one Directive 2002/15/EC [7] is relevant to this Report. It relates to "*mobile workers employed by undertakings established in a Member State, participating in road transport activities covered by Regulation (EEC) No 3820/85*". This Regulation applies to carriage by road, but excludes "*vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres*"[8].

Therefore, the working time of workers concerned with the carriage of passengers on regular urban transport services, as well as of mobile staff where the route does not exceed 50 kilometres is regulated by the Directive. Whenever the route exceeds 50 kilometres, Directive 2002/15/EC is applicable. Given the regulatory differences, it is important that workers are covered by the right or, in any case, by the most protective provisions.

---

1 OJ L 299, 18.11.2003, p. 9

2 Directive 2003/88/EC codifies Council Directive 93/104/EC of 23 November 1993 (OJ L 307, 13.12.1993, p. 18) and Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 (OJ L 195, 1.8.2000, p. 41)

3 For workers covered by Directive 2003/88/EC, a distinction can be established between "mobile workers" and other workers. Mobile workers are defined as workers employed as members of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway. According to Article 20.1 of the Directive, Articles 3, 4, 5 and 8 are not applicable to them.

4 Article 1 paragraph 3

5 Article 14

6 Council Directive 1999/63/EC of 21 June 1999 (OJ L 167, 2.7.1999, p. 33);
Council Directive 2000/79/EC of 27 November 2000 (OJ L 302, 1.12.2000, p. 57);
Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 (OJ L 80, 23.3.2002, p. 35);
Council Directive 2005/47/EC of 18 July 2005 (OJ L 195, 27.7.2005, p. 15).

7 OJ L 80, 23.3.2002, p. 35

8 Article 4, Regulation (EEC) No 3820/85

1.2. Why the report?

Article 26 of the Directive lays down that "*not later than 1 August 2005 the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to workers concerned with the carriage of passengers on regular urban transport service, with a view to presenting, if need be, the appropriate modifications to ensure a coherent and suitable approach in the sector*".

In order to comply with this obligation, the Commission prepared a questionnaire for completion by Member States and social partners. This report summarises the replies received and presents some conclusions concerning the suitability of the Directive's provisions for the urban transport sector.

2. OVERVIEW OF NATIONAL REPORTS

2.1. Austria

Urban transport is regulated by agreements set between city authorities and communal transport companies. Workers in private bus and train companies are covered by federal collective agreements. At company level, there may also be collective agreements.

In addition, two legal measures apply to regular urban passenger transport, one for trains and trams and another for road transport. The latter allows for derogations, in accordance with both the Directive and Directive 2002/15/EC, where so provided by collective agreement, concerning daily rest, weekly rest and maximum weekly working time provisions.

Austria extends application of Regulation (EEC) N° 3820/85 to bus drivers in regular urban passenger transport. The Austrian authorities interpret "carriage by road" (Article 1.1 of the Regulation) as covering all drivers on public roads, and therefore consider such workers as subject to Directive 2002/15/EC (Article 2.1. of the Regulation).

2.2. Belgium

There are companies providing both urban and regional transport, and consequently some regular routes exceed the 50 kilometres limit.

The Directive's provisions are applied in the urban transport sector. There are no regulatory differences between road and rail transport. Derogations are allowed, based on a collective agreement made compulsory by royal decree ("Arrêté royal"). The average maximum weekly working time (including overtime) is 38 hours.

2.3. Cyprus

Urban transport is provided and operated by the private sector (rail transport non existent). All minimum provisions are applied through the legislative transposition of the Directive. No derogations exist with regard to urban transport workers. However, collective agreements contain more favourable provisions, and are applicable at company level (there are no national or regional collective agreements in this sector). The average maximum weekly working time (including overtime) is 48 hours.

2.4. Czech Republic

In Czech Republic, all minimum provisions are applied in the urban transport sector through the legislative transposition of the Directive, irrespective of the means of transport used. The organisation of working time is regulated by the Labour Code and by a special legislation applicable to working time in the transport sector (driving periods, rest periods and security breaks). Collective agreements are applicable at company level only.

As regards driving time, lorry or bus crews shall have a daily driving period of maximum 9 hours (twice a week the driving period may be extended to 10 hours) and total driving periods shall not exceed 90 hours during 2 consecutive weeks.

2.5. Denmark

Urban transport sector is covered by national collective agreements, except for the communal bus services of urban Odense and Århus, which fall under local communal conventions.

Collective agreements do not apply obligatorily to all bus companies providing public transport services. However, in practice, almost all the companies have to comply with a collective agreement, because the communal authorities generally specify compliance with the sectoral national collective agreement as a condition for public transport tenders.

Certain railways and regular urban transport services activities can be subject to derogations from the provisions concerning daily and weekly rest. The average maximum weekly working time (not including overtime) cannot exceed 42 hours, or 37 hours on average over a period not exceeding 16 weeks. Overtime is usually compensated with periods of rest.

2.6. Estonia

Urban public transport is organised by municipal authorities. There are no statutory differences between road and rail transport. The vast majority of the urban road transport sector is covered by a national collective agreement, compulsory for all companies operating in the road transport sector. The collective agreements in the rail sector are concluded at company level.

Maximum weekly working time is limited to 40 hours. The average maximum weekly working time (including overtime) cannot exceed 48 hours within a reference period of 4 months. In the transport sector, individual opt-out is used mainly in relation to road transport.

2.7. Finland

The Directive has been implemented by the "Working Hours Act" which allows collective agreements (compulsory for all companies in the sector) to derogate from the Directive's provisions. Specific provisions apply to driving time for rail services within the regular urban transport sector. According to the Finnish authorities, certain provisions of the Directive are less suitable for the rail sector (e.g. the provisions on night workers and security guarantees).

The average maximum weekly working time (including overtime) for bus personnel is 48 hours within a reference period of 12 months. There are no formal limits to maximum weekly working time for train personnel. However, according to the national authorities, in practice the average working time (including overtime) does not exceed 48 hours per week.

2.8. France

Transposition of the Directive to the urban transport sector has not yet been completed. (Two decrees are due for enactment, which will regulate working time in the urban public transport sector and in the Régie Autonome des Transports Parisiens – RATP – bus and metro).

The Directive's provisions which are already transposed allow for derogations, notably on breaks, daily rest and weekly rest period. Similar provisions apply to road and to rail services within this sector. Driving time is not regulated for urban transport.

Urban transport is covered by inter-professional national collective agreements (applicable at national level to all companies of all sectors or of a pre-defined sector), by the national urban transport collective agreement (mandatory for all companies of the urban transport sector), by collective agreements which complement the national sectoral agreement (mandatory for undertakings which are members of the signatory professional organisations, and voluntary for other undertakings) and by agreements at company level.

RATP is not subject to the national urban transport collective agreement, nor to its complementary collective agreements, but it is subject to specific provisions and to internal collective agreements.

2.9. Germany

At national level, workers in the urban public transport sector are subject to general provisions regulating working time. Employees of the bus and tram networks are also subject to driving staff regulations.

Collective agreements vary in scope, and can apply to all operators (rail and non-rail) or just to some. Private companies are subject to regional collective agreements (at Land level). Public companies are covered by a national collective agreement. With rare exceptions, collective agreements do not have any general binding effect (they only apply to those employers and employees who are members of the signatory organisations).

There are special provisions regulating working time for drivers in road transport. Drivers on routes not exceeding 50 kilometres are also subject to the driving time, breaks and rest periods required under Regulation (EEC) N° 3820/85.

Average maximum weekly working time (including overtime) cannot exceed 48 hours within a reference period of 12 months. Since 2004, German working time law allows for working time limits to be exceeded, where collective agreements so provide, subject to individual workers' agreement (individual opt-out). It is not known whether urban transport collective agreements have made use of this option.

2.10. Greece

Urban transport sector is fully covered by either collective agreements or working regulations. Companies are covered by a national collective agreement, or whenever applicable by collective agreements at company level.

According to the national collective agreement the maximum weekly working time is 40 hours plus 3 hours overtime, unless a collective agreement at company level specifically provides otherwise. The reference period is generally 1 week.

2.11. Hungary

Companies providing urban transport services are covered by collective agreements at company level, and in some cases at branch level.

Hungarian legislation requires daily rests in regular urban passenger transport to comply with the requirements of Regulation (EEC) N° 3820/85. The average maximum weekly working time (including overtime) is between 42 and 48 hours, and the length of reference period varies (1 month, 2 months or quarterly). Maximum driving time is limited to 11 hours. The individual opt-out under Article 22 is applied.

2.12. Ireland

There are regulations, primarily applicable at national level, which are complemented by certain company level collective agreements. The regulations laid down under the Road Traffic Acts are compulsory. The collective agreements are not.

There are different provisions for regular passenger transport on road, compared to rail, due to the differences in the existing legislative frameworks. Specific provisions also apply to driving time in the regular urban transport sector, based on its economic and social needs. The maximum weekly working time depends on the transport operator, but is subject to a 48 hour limit.

Lastly, general exemptions are applied to the length of night work, health assessment and transfer of night workers to day work, and guarantees for night-time working.

2.13. Italy

The measures transposing the Directive allow derogations in the urban transport sector, where collective agreements so provide. Collective agreements apply at national and regional levels.

The maximum weekly working time is 40 hours. Derogations are allowed as regards regular passenger road transport, provided that the weekly average does not exceed 48 hours including overtime. Collective agreements can establish more favourable provisions. The reference period cannot exceed 4 months (6 or 12 months where so provided by collective agreements, if due to technical reasons or working organisation).

2.14. Latvia

Public transport is by bus, tram or trolleybus (rail urban transport is non existent). Collective agreements apply at company level.

The maximum weekly working time is 56 hours per week (overtime limited to 144 hours in a 4 months period).

The system does not comply, in certain circumstances, with working time and rest time provisions. According to the Latvian authorities, this is due to a shortage of drivers and conductors. These authorities argue that the working time provisions applicable to public transport should be adapted to the real market situation, and that a transitional period of at least 3 years would be necessary to achieve compliance.

2.15. Lithuania

The organisation of working time is regulated by the Labour Code, and by a government resolution which allows derogations for urban road transport (rail urban transport is non existent).

Lithuanian labour legislation foresees, for all sectors, the possibility to conclude company, sectoral, territorial and national collective agreements. Presently there are only company collective agreements in force in the urban transport sector. No exhaustive list of these agreements is available, as no public institution is entitled to register company level collective agreements. According to the Labour Code, collective agreements are void if they allow less favourable working conditions than those required by the Code or by other legal instruments.

In the urban transport sector the maximum weekly working time is 60 hours, within a maximum average weekly working time of 48 hours and with a reference period of 4 months (6 months if due to objective reasons and if following consultations with interested social partners).

2.16. Luxembourg

Urban transport sector is regulated by a collective agreement applicable to bus drivers and auxiliary workers (compulsory at national level for all private companies).

Luxembourg extends to all urban transport bus drivers the maximum weekly working time requirements of Regulation (EEC) N° 3820/85. Thus, maximum driving time cannot exceed 90 hours during a 2-week period.

2.17. Malta

In urban transport 80% of the workers are self-employed (rail transport is non existent). There are no collective agreements.

The Maltese authorities underline certain features as specific to the Maltese context: short duration of journeys (maximum 60 minutes), low speed limits on roads, long stand-by periods in between individual journeys and day-on, day-off shift pattern. Derogations are allowed regarding daily rest and breaks. The individual opt-out has been implemented.

2.18. Netherlands

Urban transport sector is regulated by a national collective agreement. However, some companies are not subject to it and have their own collective agreements. Moreover, companies may have additional regulations, which develop or complement those agreements. Thus, the whole sector is covered by collective agreements.

Regular passenger transport by road (bus) is governed by a working time decree, based upon Regulation (EEC) N° 3820/85, except for breaks which are, as well as the regular passenger transport by metro, tramway, light train and train subjected to the legislative transposition of the Directive ("Working Hours Act").

The average weekly working time in the bus sector is 48 hours within a 13-week reference period (26-week where a collective agreement so provides). As regards metro, tramway, light train and train, the average weekly working time is 45 hours (including overtime) within a 13-

week reference period (48 hours within a 13-week reference period where a collective agreement so provides).

2.19. Poland

There are no national or regional collective agreements governing the urban transport sector, but the vast majority of companies have collective agreements. These agreements are not permitted to contain less favourable provisions than those applicable under the Labour Code.

The rules for urban transport drivers do not differ as between the Labour Code and drivers' working time legislation. However, an article of the working time legislation allows, in exceptional cases, a discontinuous working time regime for regular transport drivers on urban routes, according to a predefined time-table. The maximum weekly working time (overtime included) is 48 hours.

2.20. Portugal

The urban transport sector is regulated by the general rules of the Labour Code. Derogations within the urban transport sector are permitted, by company level collective agreements, in which concerns daily rest, breaks, weekly rest, maximum weekly working time and length of night work.

The maximum average weekly working time (overtime included) cannot exceed 48 hours, within a reference period which must be regulated by collective agreement and may not exceed 12 months (4 or 6 months for urban transport, where there is no collective agreement).

2.21. Slovakia

Collective agreements, concluded at company level, fully cover urban public transport employees and include more protective provisions. In addition, a higher level collective agreement, which covers the whole economic sector and is compulsory for all employers and trade unions covered by it, enlarges and modifies certain provisions of the company-level collective agreements.

Under the Labour Code, the maximum weekly working time including overtime cannot exceed 48 hours, distributed evenly over individual weeks. The employer may, however, after agreement with the employees' representatives or with the employee, arrange working time unevenly for individual weeks, within a 4-month reference period.

2.22. Slovenia

Regular public road transport services are divided into urban and suburban services. Slovenia is considered as a single region, as concerns road transport. Since urban transport is not provided in all municipalities, interurban transport covers middle-distance services (from 5 to 50 Km) as well as long distance services (more than 50 Km).

Regular urban transport services are regulated by 2 national collective agreements (for passenger road and for rail transport) and by company collective agreements which provide extra rights for workers. Provisions differ as between road, and rail, passenger transport services. The average weekly working time is 40 hours, and the maximum weekly working time cannot exceed 48 hours.

2.23. Spain

Urban transport sector is regulated by national labour legislation, and by collective agreements at company and national level. Organisation of regular road transport for journeys of less than 50 kilometres is the responsibility of the "Autoridades Autonómicas", while provision of urban passenger transport is the responsibility of local authorities.

The average weekly working time is 40 hours within a 12-month reference period, with a maximum of 80 hours' overtime per year. There are no specific provisions regarding driving time in regular urban transport.

2.24. Sweden

As regards applicable legislation, there is no special legislation for the urban transport sector. The Swedish Working Hours Act applies in full for this sector, just as it does for most other sectors. It is possible, however, for the social partners to derogate from the Act by the way of collective agreements, provided that they do not entail less favourable rules than those prescribed by the Directive. There are no specific provisions regarding driving time in regular urban transport, but they might occur in collective agreements.

Collective agreements are signed at national and company level. Concerning the urban transport by rail, the agreements are also signed at local level. Collective agreements are compulsory for those companies which are members of employers' organisations, or have signed collective agreements of their own.

The maximum aggregated weekly working time (including normal working time, overtime and on-call time) is 48 hours for each 7 day period, to be calculated over a 4 month period. This period of calculation can be extended to up to 12 months by collective agreement.

2.25. United Kingdom

As regards applicable legislation, the urban transport sector is regulated by national regulations and by company collective agreements. The 48-hour maximum weekly working time (including overtime) applies subject to the individual opt-out, which has been implemented in the UK. According to the UK authorities, most company collective agreements involve a working week of between 35 and 45 hours, plus voluntary overtime.

3. SOCIAL PARTNERS

According to the European Transport Workers' Federation (ETF), one major problem is the lack of mechanisms for effective and deterrent sanctions, which it considers necessary in order to ensure that the working time provisions are enforced. Moreover, the ETF calls for collective agreements to be given mandatory application to all companies and workers active in the urban transport sector. With the introduction of competitive tendering, subcontracting and privatisation, the number of workers who are not covered by collective agreements has increased in countries with no compulsory collective agreements at national level. Finally, the ETF indicated that as far as it was aware, implementation of the Directive did not cause any problems for the sector. This appeared to be due to its specific characteristics, as Article 17 paragraph 3. allows for derogations which provide high flexibility to the sector. Nevertheless, the ETF stressed two elements as causing considerable health and safety problems: the lack of

a quantitative definition of minimum standard "adequate rest" and the wide use of the individual opt-out by bus drivers in regular passenger transport in the United Kingdom.

As regards the International Association for Public Transport (UITP), the Directive's provisions are suitable for the urban transport sector. The UITP particularly emphasize the necessity of maintaining the derogations allowed by Article 17 paragraph 3. point (c) indent (viii), which ensure “continuity of service or production”.

4. CONCLUSIONS

The regular urban transport sector is regulated at the national and/or regional level, by rules and structures that differ across Member States. In many countries, different legislation and/or collective agreements apply, depending on whether transport is by road or by rail.

In general, the level of protection granted to urban transport workers is higher than the minimum requirements under the Directive.

In most of the Member States regular urban transport workers are covered by collective agreements, whose scope differs from country to country. These agreements generally cover all aspects of worker-employer relations. Collective agreements apply at national, regional and/or company level, depending on the Member State.

In several Member States, the Directive is implemented by several national legislative measures. Where this is the case, often there is separate national legislation for bus drivers. In addition, some Member States extend the provisions of Regulation (EEC) N° 3820/85 to bus drivers in regular urban passenger transport. Nevertheless, at this stage it is not clear whether all provisions of Directive 2002/15/EC are applied.

In cases where urban and regional transport are provided by the same company, it is not always clear whether Regulation (EEC) N° 3820/85 and Directive 2002/15/EC apply to workers whose route is longer than 50 kilometres. The non application of these legal texts to workers covered by their scope is a violation of Community law, since these specific legal instruments are more protective than the Directive.

In some cases, the provisions of Regulation (EEC) No 3820/85 and Directive 2002/15/EC seem to be combined with the broader possibilities of derogation permitted by the Directive.

In addition, some Member States' legislation permits a 12-month reference period for calculating average maximum weekly working time, in contradiction with the Directive.

Five Member States reported having implemented the individual opt-out (Estonia, Germany, Hungary, Malta and United Kingdom). However, all of them applied it broadly, rather than to the urban transport sector specifically.

Neither trade unions nor employers' representatives have requested a review of the provisions currently applicable to this sector. Trade unions underline difficulties in enforcing the provisions, because they consider the applicable sanctions to be ineffective. In their view, progress should be made on this issue, in order to avoid risks to the development of this sector.

In conclusion, the provisions of the Directive appear to be suitable for the urban transport sector and no major problems have been identified. Only one Member State (Latvia) has pointed out difficulties in complying with the rules of the Directive, specifically as concerns maximum weekly working time.

The Commission does not consider that any change is needed to the rules regarding organisation of working time for workers concerned with the carriage of passengers on regular urban transport services. The Commission will investigate the above mentioned situations where there are indications of difficulties in compliance with Community law, and in particular with the Directive and will take its responsibilities in accordance with the Treaty.