

COMMUNICATION FROM THE COMMISSION

TO THE COUNCIL, THE EUROPEAN PARLIAMENT,

THE ECONOMIC AND SOCIAL COMMITTEE

AND THE COMMITTEE OF THE REGIONS

On the organisation of working time in the sectors and activities excluded from

Directive 93/104/EC of 23 November 1993

Proposals for

COUNCIL DIRECTIVES

Amending Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive

Concerning the organisation of working time for mobile workers performing road transport activities and for self-employed drivers

Concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)

Concerning the enforcement of seafarers' hours of work on board ships using Community ports

(Presented by the Commission)

COMMISSION RECOMMENDATION

On ratification of ILO Convention 180 concerning seafarers' hours of work and the manning of ships, and ratification of the 1996 Protocol to the 1976 Merchant Shipping (Minimum Standards) Convention

## THE AIM OF THIS COMMUNICATION

1. This Communication explains the Commission's plans to protect workers not currently covered by the Working Time Directive (93/104/EC) against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working patterns. The Commission has, since the adoption of that Directive, maintained the position that workers in these sectors should benefit from minimum standards as regards to working time, in order to protect their own health and safety as well as the safety of others. There have been, for example, repeated reminders of the dangers to health and safety, as well as to fair competition in the internal market, of the continued failure to deal with the regulation of working time in the transport sector.
2. The Commission proposes the following measures:
  - 2.1. Amendment of the Working Time Directive to cover all non-mobile workers, as well as mobile workers in the rail sector, and to make certain provisions in respect of other mobile workers.
  - 2.2. Specific measures on working time in road.
  - 2.3. Specific measures on working time of seafarers.
3. A table setting out the coverage of different activities under these proposals is attached.
4. The Commission's proposals are to be considered as a package of measures which takes into account health and safety standards, the operational difficulties of these sectors, ensures coherence with other legislation in the transport safety area, and has due regard for international and competitive factors. Where relevant, the proposals are based on agreements between the social partners. In those areas where agreements were not concluded, the proposals take due account of the points of convergence reached in negotiations between the social partners.

## BACKGROUND

5. The Council of Ministers adopted Directive 93/104/EC on certain aspects of the organisation of working time on 23 November 1993. Certain sectors and activities are excluded from the scope of the Directive. These are air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training.
6. In negotiations with the European Parliament during the Second Reading, the Commission undertook to take initiatives in respect of the sectors and activities excluded from the

Directive. For example, the Commission's Communication to the European Parliament<sup>1</sup> stated the Commission's intention *"to take appropriate initiatives as soon as possible in respect of the different sectors excluded from the scope of the Directive. The preparatory work for the implementation of these initiatives is being undertaken in the context of the Joint Sectoral Committees for the sectors concerned (where they exist)."*

7. In the Medium Term Social Action Programme 1995-97, the Commission stated that *"discussions with the social partners and/or studies will continue on how best to ensure that the activities and sectors excluded from the directive on the organisation of working time are appropriately covered .... If necessary, the Commission will consider bringing forward proposals to complete the Directive in 1996-1997"*

## THE CONSULTATION PROCESS

8. On 15 July 1997, the Commission adopted a White Paper on the sectors and activities excluded from the Working Time Directive (COM (97) 334). When the White Paper was sent to the social partners, they were asked to treat it as the first round of formal consultation in respect of working time in the sectors and activities excluded from the Directive.
9. The White Paper examined the nature and extent of the exclusion, the size of the problem, the legal and contractual situation in the Member States and the initiatives taken. It provided a sector-by-sector analysis and assessment of the specific features and problems of each sector and activity.
10. The White Paper set out the criteria against which the preferred policy option needs to be judged. In the case of action in respect of workers not covered by the Working Time Directive, the following criteria would appear to be appropriate. The action proposed would need to ensure adequate protection for the health and safety of workers with regard to working time; to allow adequate operating flexibility to firms; to take account of any impact on employment; not to place unreasonable burdens on firms, in particular small firms, and to take account of specific characteristics of sectors such as share fishing and the heterogeneous nature of sea fishing; to respect the principle of subsidiarity; to respect the principle of proportionality.
11. The Commission concluded that a pragmatic approach should be taken. The Commission therefore proposed to proceed on the basis of its preferred option, the so-called "differentiated" approach. Under this option a distinction would be made between those activities which can be accommodated under the Working Time Directive and those which require specific sectoral measures, while encouraging the social partners to draw up recommendations and agreements, which could form the basis of, or replace, Commission proposals.

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<sup>1</sup> SEC(93) 1054 of 7 July 1993

12. The European Parliament and the Economic and Social Committee both adopted Opinions broadly supporting the Commission's approach.
13. On 31 March 1998, the Commission launched a second phase consultation process on the content of its envisaged proposal, following the responses to the White Paper. The document summarised the reactions from the social partners to the White Paper and analysed the responses. The Commission also continued to support the "differentiated approach".
14. The document called upon the social partners within six weeks of the date of receipt:
  - to forward to it an opinion or, where appropriate, joint recommendations on the objectives and the content of the proposals envisaged;
  - or to inform the Commission jointly, if applicable and where they have not already done so, of their intention to undertake negotiations.

#### REACTIONS TO THE CONSULTATION DOCUMENT

15. Fifteen replies were received from the social partners consulted. These include UNICE, all the main sectoral organisations representing employers in the transport sectors and Europeche on behalf of sea fishing industries. CEEP replied on behalf of the public sector employers, including urban passenger transport. UEAPME replied concerning SME's. On the trade union side a composite reply was sent by the ETUC, supplemented by letters from the FST, Eurocadres and EMCEF.
16. Most respondents supported the inclusion of non-mobile workers in the scope of the Directive.
17. There was widespread support for the differentiated approach including from CEEP and ETUC, though UEAPME preferred a sectoral approach. The UEAPME considered that any new measures should not impose additional administrative burdens on SME's, but recognised the need to ensure fair competition within the internal market. UNICE continued to favour a non-binding sectoral approach.
18. Both IRU (road employers) and ECSA (maritime transport employers) referred to their ongoing negotiations and expressed the wish that any agreement should remain intact when it is transposed into Community law. ECSA also referred to the importance that Member States ratify ILO Convention 180 (working time of seafarers) and the Protocol to Convention 147 on Merchant Shipping (Minimum Standards). Both these points were supported by the trade unions concerned. The AEA (air transport) support the extension of the arrangements in the Working Time Directive to all categories of personnel in civil aviation. They expressed the wish to enter into dialogue.

19. Europêche (sea fishing) recalled their reservations about the application of regulations on rest periods to their sector, given the nature of the work and the differences within the sector. They supported the proposal on health assessments for night workers and suggested that an annual limitation of working time might be appropriate, if a suitable definition of working time could be found. They recalled the opposition of certain delegations to the inclusion of share-fishermen within the scope of the Directive, and in particular the problems which would arise from the application of four weeks' paid annual leave to them.
20. On the trade union side, the ETUC continued to support the Commission's approach in general, but rejected the proposal with regard to the annualisation of working time. They draw attention to the progress made in negotiations and stated that the Agreements should be underpinned by a subsequent Council decision. Where there is no agreement, as in the case of inland waterways and sea fishing, the Commission should make proposals. In the case of the offshore sector, the Commission should facilitate discussions between the social partners. In the case of trainee doctors, the ETUC supported the Commission's proposal, including the proposal to include the work of junior doctors under the possible derogations. They request, however, that agreements on working time should be concluded at national level with the representative organisations that are officially represented at the EU level by the Permanent Working Group of Junior Hospital Doctors (PWG). The ETUC also requested a revision of the Directive to reduce the number of possibilities for derogation, in particular in respect of managers who enjoy an independent decision-making capacity.
21. Following the consultation process, discussions between the social partners intensified in most of the Joint Committees concerned. (The exception was inland waterways).
22. On 30 September 1998, formal agreements were signed concerning working time in rail transport and maritime transport. In the case of rail transport the social partners agreed that the provisions of the Working Time Directive should be applied to all railway workers, with suitable adjustments to the derogations, provided that similar provisions are applied to other transport sectors at the same time; and that existing conditions concerning working time are applied through legislation to all new entrants to the industry. In the case of seafarers, the parties requested the Commission to make a proposal for the agreement to be implemented by a Council decision in accordance with Article 4(2) of the Agreement on social policy.
23. Intensive negotiations in road transport did not lead to agreement but identified the main elements to be taken into consideration.
24. The Commission's approach has therefore been slightly modified from that identified in the White Paper, in order to implement the agreements of the social partners and to take account of views put forward during the consultation process. Therefore, mobile workers in railway will be fully covered by Directive 93/104, including the possibility for derogations necessary to take account of the particular operational requirements of the industry. On the other hand, mobile workers in sea transport will be covered

only by the Directive implementing the agreement between social partners in that sector. Finally, those engaged in other work at sea will be fully covered by the Directive, because the draft proposal accommodates the particular operational shift system required by that industry.

## THE COMMISSION'S APPROACH – ARTICULATION WITH THE DIFFERENT INITIATIVES ON WORKING TIME

25. The approach takes into account the operational difficulties which led to the exclusion of these sectors in the first place, ensures coherence with other legislation in the transport safety area, and has due regard for international and competitive factors. The proposals are based on agreements between the social partners in the maritime transport and railway industries and, while there was no agreement, take due account of the points of convergence reached in negotiations between the social partners in the road transport industry.
26. In the light of the consultation process and the detailed negotiations between the social partners, the Commission proposes to proceed as follows.

### **Horizontal measures**

#### Amendment of the Working Time Directive

27. It is proposed that the Working Time Directive should be amended to ensure that all **non-mobile** workers, including **doctors in training**, are covered. It will also apply to **offshore** workers. Suitable adjustments will be made to the derogations and the reference period in the case of offshore workers.
28. The Directive will also apply to all mobile **railway** workers, in accordance with the agreement concluded by the social partners in that sector. Appropriate derogations will apply to take account of the operational and safety requirements of that industry.
29. In addition, mobile workers in **road, air and inland waterway** transport and **sea fishing** will have a guarantee of adequate rest and a limit on the maximum number of hours to be worked annually. They will also be covered by certain basic provisions for night workers and shift workers, including health assessments. The Directive's provisions on 4 weeks' paid annual leave will also apply to these workers, with the exception of share-fishermen.

### **Sectoral measures**

30. Specific measures are proposed in respect of **road** and **sea transport**.
31. As a consequence the situation in the different sectors will be as follows:

## Road Transport

32. The Working Time Directive as amended will cover non-mobile workers, and will also provide for mobile workers to have a guarantee of adequate rest and for a maximum number of hours to be worked annually. These workers will also be covered by the Directive's provisions on 4 weeks' paid annual leave and certain basic provisions for night workers and shift workers, including health assessments.
33. The specific proposal for a Directive concerning mobile workers performing road transport activities and self-employed drivers covers the working time, breaks, rest periods and limits on night work of these workers. These sector-specific measures will take precedence over the relevant provisions of the Working Time Directive, as amended, in accordance with Article 14 of that Directive.

## Sea Transport

34. The Working Time Directive as amended will cover non-mobile workers.
35. Specific measures include the following elements:
  - 35.1. A proposal for a Directive implementing the European Agreement on the working time of seafarers, concluded on 30<sup>th</sup> September 1998.
  - 35.2. A proposal for a Directive concerning the enforcement of seafarers' hours of work on board ships using Community ports.
  - 35.3. A Commission Recommendation on the ratification of ILO Convention 180 concerning seafarers' hours of work and the manning of ships and the Protocol to ILO Convention 147 on Merchant Shipping (Minimum Standards). This recommendation is addressed separately to the Member States.
36. As the Directive implementing the European Agreement on the working time of seafarers is based on the Agreement on Social Policy, it does not, therefore, apply to the United Kingdom (unless it is adopted under Article 139 of the Amsterdam Treaty, after its coming into force). The Commission will, therefore, submit to the Council at the appropriate time, a proposal for a Council Directive to extend the Social Protocol Directive to the United Kingdom.

## Air Transport, inland waterway, sea fishing

37. The Working Time Directive as amended will cover non-mobile workers.
38. The amended Working Time Directive will also provide for mobile workers to have a guarantee of adequate rest and for a maximum number of hours to be worked annually. These workers will also be covered by the Directive's provisions on 4 weeks' paid annual leave (with the exception of share fishermen) and certain basic provisions for night workers and shift workers, including health assessments.

39. The Commission is currently preparing a proposal for a Directive, which will include provisions on rest periods and limits on navigation time in respect of **inland waterways**. It will also propose a specific Directive on the working time and rest periods of **seafishermen**. This will also provide adequate alternative arrangements for paid leave for share-fishermen. Such sector-specific measures will take precedence over the relevant provisions of the Working Time Directive, as amended, in accordance with Article 14 of that Directive.
  
40. Following discussions with the relevant parties, the Commission is preparing proposals for a Regulatory Community Flight Time Limitation scheme, based on operational safety considerations. This, it is hoped, will complement the measures proposed in the amended Working Time Directive in respect of flight crew in **air transport** and could at the same time serve to meet the occupational safety and health needs of this category of personnel. In addition, negotiations for flight crew may be resumed in the Joint Committee on Civil Aviation. Any legislative proposal resulting from these negotiations would also take precedence over the relevant provisions of the Working Time Directive, as amended, in accordance with Article 14 of that Directive.

**COVERAGE OF DIFFERENT ACTIVITIES UNDER WORKING TIME PROPOSALS EXCLUDED SECTORS**

Activity	Application of all provisions of 93/104/EC	Amendment of derogations under 93/104/EC	Amendment of 93/104/EC to provide for				Sector specific supplementary provisions	Sector specific only
			Adequate rest	Annual leave	Annual Limit Work time	Health assessments		
Non mobile workers in road, air, inland water, sea transport, sea fishing	x	x						
Doctors in training	x	x						
Rail transport	x	x						
Offshore	All, but annual limit working time	x			x			
Seafishermen			x	x (except share-fishermen)	x	x	In preparation	

Activity	Application of all provisions of 93/104/EC	Amendment of derogations under 93/104/EC	Amendment of 93/104/EC to provide for				Sector specific supplementary provisions	Sector specific only
			Adequate rest	Annual leave	Annual Limit Work time	Health assessments		
Flight crews			x	x	x	x	Flight time limits in preparation + possible negotiations in Joint Committee	
Mobile workers inland water			x	x	x	x	In preparation	
Mobile road transport workers			x	x	x	x	Proposal for a Directive	
Seafarers							Proposals for directives + Agreement + Recommendation on ratification of ILO Conventions	

**Proposal for a COUNCIL DIRECTIVE amending Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time to cover sectors and activities excluded from that Directive**

## EXPLANATORY MEMORANDUM

### Aim of the Proposal

1. This proposal provides for the Council Directive on certain aspects of the organisation of working time (93/104/EC) to be amended to ensure that workers not currently covered by the Working Time Directive (93/104/EC) are protected against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working patterns.
2. In particular, it is proposed to amend the Working Time Directive to ensure that **non-mobile** workers, including **doctors in training**, are covered. The amended Directive will also apply to all **railway** workers and **offshore** workers. Suitable adjustments will be made to the derogations and the reference period in the case of offshore workers.
3. In addition, mobile workers in **road, air and inland waterway** transport and **sea fishing** will have a guarantee of adequate rest and a limit on the maximum number of hours to be worked annually. They will also be covered by the Directive's provisions on 4 weeks' paid annual leave and certain basic provisions for night workers and shift workers, including health assessments.

### Material content

4. The following amendments are proposed to Directive 93/104/EC (a comparative table setting out the proposed amendments is attached).
5. *Article 1.3 (scope)*: In order to avoid any possibility of gaps in coverage, all the current exceptions are deleted. This will ensure, in particular, that the Directive applies to all non-mobile workers and to all other workers not covered by specific Community legislation on working time. Only workers covered by the proposal to implement the European Agreement on the organisation of working time of seafarers will then be outside the scope of the Working Time Directive, as amended. The definitions of these workers are the same as those used in the relevant proposals. It is to be noted that Article 14 of the Directive (more specific Community provisions) is not amended. As a further safeguard against uncertainty, it is envisaged that further proposals for Directives will themselves make clear their relationship to the Working Time Directive.
6. *Article 2 (Definitions)*: The general definitions of Directive 93/104/EC will remain. In particular the definition of "working time", which contains three elements to be fulfilled concurrently (i.e. that the worker (1) is working, (2) at the employer's disposal, and (3) carrying out his activity or duties) will continue to allow Member States to define working time in a restrictive way, while allowing a wider definition.

In addition, three new concepts are introduced: “mobile workers”, “off-shore work” and “adequate rest”.

7. *Mobile worker*: The definitions in Regulation 1408/71 (on social security for migrant workers) are used as a model. The concept has been limited, however, because, on the one hand, there is agreement that all the provisions of the Directive should apply to railway workers, with suitable adjustments, while on the other hand seafarers are not covered by this proposal. The only workers covered by this definition will, therefore, be sea fishermen, mobile workers in road transport, flight personnel and inland waterway workers. The position of workers in "own account" road transport<sup>1</sup> will be clarified in the separate road transport proposal.
8. *Offshore work*: the definition takes into account the advice of representatives of the industry.
9. *Adequate rest*: The Commission recognised in its White Paper the difficulty of applying even the flexible provisions of the Working Time Directive to some categories of workers. The definition of *adequate rest* proposed is designed to establish the criteria, which need to be taken into account, while not imposing numerical limits. The workers concerned should have regular rest periods, which are sufficient to ensure that, as a result of fatigue arising from long working hours or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term. The Commission considers that rest provisions which comply with Articles 3, 4 and 5 of the Working Time Directive would satisfy these criteria.
10. *Article 5 (weekly rest)*: The second sub-paragraph of Article 5, which refers to Sunday rest, is deleted. This formalises the decision of the European Court of Justice, referred to above.
11. *Article 17 (derogations)*: A number of amendments are proposed to Article 17.2 to make clear that the derogations apply to certain activities previously excluded from the Working Time Directive. Examples given are "railway staff on board trains" (17.2.1(a)), "the activities of doctors in training" (17.2.1(c)(i)), "other workers directly concerned with the provision of transport services" (17.2.1(c)(ii)) and "oil" production (17.2.1(c)(iv)).
12. A new derogation (*Article 17.2.4*) is proposed in respect of the maximum working week for doctors in training, for a transitional period. Where there is an agreement between the employer and workers' representatives, the limit on the average number of weekly hours worked could be increased to 54 (i.e. one hour per day) over a four

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<sup>1</sup> I.e. drivers employed by firms other than professional road transport companies, e.g. in chemicals, oil products, agri-food, construction and the gross/retail trade.

month reference period. The Commission is determined to ensure that the working hours of junior hospital doctors are reduced to reasonable levels. However, the further flexibility proposed is necessary, because it is clear that in some Member States, at least, the immediate passage to a maximum working week of 48 hours on average would have serious consequences for the provision of health care. This is not only because of the increased costs involved, but also because of the lack of trained doctors. The Commission considers that this additional flexibility, for a transitional period, should provide sufficient time for the hospital authorities to plan the necessary changes, including a modernisation of the organisation of work, in agreement with representatives of the doctors concerned. A period of seven years is proposed for this transitional period. This reflects the length of University medical courses in a number of Member States.

13. *Article 17A (new) (Mobile workers and offshore work)*: The Commission's intention is to apply all the provisions of the Directive to as many workers as possible, including non-mobile workers, all mobile and non-mobile railway workers and offshore workers; to extend to certain mobile workers the Directive's provisions on 4 weeks' paid annual leave and certain provisions in relation to night work and shift work (including health assessments); and to provide for these workers a guarantee of adequate rest and a limit on the number of hours to be worked annually. This last provision will also apply to offshore workers.
14. The deletion of the exclusions will have the effect of extending all the provisions of the Directive to all workers. The purposes of this article are therefore to:
  - disapply the provisions of Articles 3 (daily rest), 4 (breaks), 5 (weekly rest) and 8 (length of night work) to the mobile workers concerned;
  - make provision to ensure that these workers are entitled to adequate rest;
  - allow the limit on working time (Article 6) to be calculated over a 12 month reference period, in the case of these same workers and offshore workers; and
  - not to apply the provisions with regard to paid annual leave to share-fishermen. (Share-fishermen are members of the crew of a fishing vessel who are remunerated by a share in the earnings of the vessel).

#### Justification for the proposal

15. The Commission considers that action is needed to ensure at EC level the protection of the health and safety, with regard to working time, of workers in the sectors and activities currently excluded from the Working Time Directive. This proposal concerns those measures which can be accommodated by amending the Working Time Directive. Since the original exclusion was made because of the nature of the work and not because the workers concerned did not need protection, Community action can be justified on similar grounds to those used for the original Directive.

16. Thus, with regard to respect of the principle of subsidiarity, the European Court<sup>2</sup> has ruled that "*once the Council has found that it is necessary to improve the existing level of protection as regards the health and safety of workers and to harmonise the conditions in this area while maintaining the improvements made, achievement of that objective through the imposition of minimum requirements necessarily presupposes Community-wide action*". There is, in fact, no objective difference, in terms of subsidiarity, between the sectors excluded from the Working Time Directive and those included. It has to be concluded therefore that there can be no objection to legislative action with regard to subsidiarity.
  
17. Turning to the principle of proportionality, the Court has consistently held that, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means which it employs are *suitable for the objective pursued* and whether they do not *go beyond what is necessary* to achieve it. It is necessary, therefore, to determine whether the intensity of the Community action taken by means of the Directive goes beyond what is necessary to achieve the objective of protecting the health and safety of workers. Again, the ECJ concludes in the case of the Working Time Directive that they do not. As the current proposal does not go beyond the provisions of the Working Time Directive, it seems to the Commission that the principle of proportionality is also satisfied.

#### Legal Base

18. As the proposal is for an amendment of Directive 93/104/EC, Article 118A is the appropriate legal base.

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2. Judgment of the Court, 12 November 1996 in Case C-84/94: United Kingdom v Council of the European Union.

**Proposal for a COUNCIL DIRECTIVE amending Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time to cover sectors and activities excluded from that Directive**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In co-operation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers;

Whereas, under the terms of that Article, those directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

Whereas Council Directive 93/104/EC <sup>(4)</sup> of 23 November 1993 concerning certain aspects of the organization of working time lays down minimum safety and health requirements for the organization of working time, in respect of minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and certain aspects of night work, shift work and patterns of work.

Whereas certain sectors of activity were excluded from the scope of Directive 93/104/EC, namely air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training;

Whereas, given the specific nature of the work concerned, it is necessary to adopt appropriate measures with regard to the organisation of working time to protect the health and safety of workers in those sectors or activities which are excluded from the scope of this Directive;

Whereas, Directive 93/104/EC should be applied to non-mobile workers in the sectors and activities currently excluded;

Whereas as far as doctors in training are concerned, some further flexibility is needed;

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4 O.J. N° L 307/18 of 13.12.93

Whereas, at least some basic protection in respect of working time should be provided for mobile workers and those engaged in "other work at sea" currently excluded; whereas this basic protection should include the existing rules on annual leave and certain basic provisions for night workers and shift workers, including health assessments; whereas the existing provisions on working time and rest need to be adapted;

Whereas, because of the specific nature of the employment relationship of share fishermen, they should be excluded from the provision concerning paid annual leave;

Whereas a European Agreement in respect of the working time of seafarers is being put into effect by means of a Council decision on a proposal from the Commission, in accordance with Article 4(2) of the Agreement on Social Policy; whereas, accordingly, the provisions of this Directive should not apply to the seafarers;

Whereas, in spite of intensive negotiations, an agreement has not been possible in respect of mobile workers in undertakings engaged in road transport for hire or reward; whereas the social partners in rail transport have agreed that the provisions of the Working Time Directive should apply to all workers in the industry with suitable adaptations;

Whereas in the light of the case law of the European Court of Justice the provision relating to Sunday rest should be deleted;

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of the proposed action, as outlined above, cannot be adequately achieved by the Member States, in that the objective is to ensure that all workers in the Community enjoy adequate protection of their health and safety, with regard to working time; whereas, in view of the scale and impact of the proposed action these objectives can best be achieved at Community level by the introduction of minimum provisions applicable to the entire European Community; whereas the present Directive constitutes no more than the minimum necessary to achieve these objectives;

Whereas, in the light of the foregoing, Council Directive 93/104/EC should be amended accordingly;

HAS ADOPTED THIS DIRECTIVE:

## **Article 1**

Directive 93/104/EC is hereby amended as follows:

1. Article 1. 3 is replaced by the following:

"3.1. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Article 17 of this Directive.

3.2. This Directive shall not apply to seafarers, as defined in Directive .././EC concerning the Agreement on the organisation of working time of seafarers."

2. The following paragraphs are inserted at the end of Article 2:

"7. Mobile worker shall mean any worker on board a sea-going fishing vessel flying the flag of a Member State, or employed as a member of travelling or flying personnel by an undertaking which for hire or reward operates transport services for passengers or goods by road, air or inland waterway.

8. Offshore work shall mean work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the extraction or exploitation of mineral resources and diving in connection with such activities, whether performed from an offshore installation or a vessel.

9. Adequate rest shall mean that workers have regular rest periods, which are sufficient to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term."

3. The following sub-paragraph in Article 5 is deleted:

"The minimum rest period referred to in the first subparagraph shall in principle include Sunday."

4. The following is inserted at the end of Article 17.2.1(a):

"particularly railway staff on board trains"

5. The following is inserted after "establishments" in Article 17.2.1(c)(i):

"including the activities of doctors in training,"

6. Article 17.2.1(c)(ii) is replaced by the following:

"workers directly concerned with the provision of transport services and other dock or airport workers"

7. Article 17.2.1(c)(iv) is replaced by the following:

"gas, oil, water and electricity production, transmission and distribution, household refuse collection and incineration plants"

8. The following is inserted at the end of Article 17.2:

"2.4. from Article 6, for a transitional period of seven years from the date of adoption of this Directive, in the case of doctors in training, where there is an agreement between the employer and workers' representatives. In no case shall the number of weekly hours worked exceed an average of 54 over a four month reference period."

9. The following Article is inserted:

"Article 17A:

**Mobile Workers and Offshore Work**

1. The provisions of Articles 3, 4, 5 and 8 shall not apply to mobile workers.
2. Member States shall, however, take the necessary measures to ensure that such mobile workers are entitled to adequate rest.
3. Subject to compliance with the general principles relating to the protection of the safety and health of workers, Member States may, for objective or technical reasons or reasons concerning the organisation of work, extend the reference period referred to in Article 16.2 to 12 months, in respect of mobile workers and workers who mainly perform offshore work.
4. Article 7 shall not apply to share-fishermen.

**Article 2**

1. (a) Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years from the date of adoption], or shall ensure by that date that the two sides of industry establish the necessary measures by agreement, with Member States being obliged to take any necessary steps to enable them to guarantee at all times that the provisions laid down by this Directive are fulfilled.

(b) Member States shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, 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 a reference shall be laid down by the Member States.

3. Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.

4. Member States shall communicate to the Commission the texts of the provisions of national law already adopted or being adopted in the field governed by this Directive.

**Article 3**

This Directive is addressed to the Member States.

Done at

For the Council

The President

# IMPACT OF THE PROPOSAL ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

## Title of proposal:

Proposal for a Council Directive amending Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time to include sectors and activities excluded from that Directive.

**Document reference number:** 98017

## The proposal

### 1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The Council of Ministers adopted Directive 93/104/EC on certain aspects of the organisation of working time on 23 November 1993. It was based on Article 118A of the EC Treaty. This requires Member States to *"pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers ..."*.

The essential aims are to ensure that workers are protected against adverse effects on their health and safety caused by working excessively long hours, inadequate rest or disruptive working patterns. The Directive makes extensive provisions for flexibility in the application of the principles of the directive to specific situations.

The Commission's original proposal for a Directive on working time covered all economic sectors and activities. The Council decided, however, to exclude certain sectors and activities from the scope of the Directive. The precise wording regarding the scope of the Directive is: *"This Directive shall apply to all sectors of activity ... with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training"* (Article 1 paragraph 3).

The sixteenth recital to the Directive states : *"whereas, given the specific nature of the work concerned, it may be necessary to adopt separate measures with regard to the organization of working time in certain sectors or activities which are excluded from the scope of this Directive"*.

Thus the exclusions were considered by the Council to be directly related to the type of work involved. There was no suggestion that health and safety as regards working time was sufficiently protected in those sectors and activities.

The present proposal seeks to amend Directive 93/104/EC on certain aspects of the organisation of working time in order to ensure that workers currently not covered by the Directive have some protection against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working patterns.

The issue of subsidiarity has been specifically addressed by the European Court of Justice in relation to the Working Time Directive. In its Judgment in the application by the United Kingdom for annulment of the Working Time Directive, the Court notes that *"once the Council has found that it is necessary to improve the existing level of protection as regards the health and safety of workers and to harmonise the conditions in this area while*

*maintaining the improvements made, achievement of that objective through the imposition of minimum requirements necessarily presupposes Community-wide action".*

There is, in fact, no objective difference, in terms of subsidiarity, between the sectors excluded from the Working Time Directive and those included. It can be concluded therefore that legislative action at Community level can be justified with regard to subsidiarity.

### **The impact on undertakings**

#### **2. *Who will be affected by the proposal?***

The proposal will apply to all workers in the sectors and activities currently excluded from the Working Time Directive, except for seafarers and mobile workers in road transport.

#### **3 *What will undertakings have to do to comply with the proposal?***

Businesses will need to ensure that the provisions of the Directive, in particular with regard to rest, limits on working time and annual leave are complied with.

#### **4. *What economic effects is the proposal likely to have?***

##### **(a) *What will be the impact on***

##### **– Employment**

The employment effects will depend on the way any necessary changes are introduced. *Prima facie* there could be positive employment effects if additional workers are recruited to take account of reductions in overtime and increases in annual leave.

##### **– Capital investment and business start-ups**

Negligible

##### **– The competitiveness of undertakings?**

Given the trade-off of costs and benefits described at c) and d) below the effects will be fairly neutral.

##### **(b) *Do new administrative procedures need to be put in place?***

There will be a one-off cost of introducing new work rosters. Most firms already have adequate monitoring systems, but some extensions may be needed to be able to prove compliance.

c) *Cost-benefit in quantitative and qualitative terms*

The Commission has arranged for a Business Impact Assessment to be undertaken<sup>5</sup> to assess the potential impact of the Working Time Directive on the sectors and activities currently excluded from the Directive.

The study shows that the costs which face the businesses fall into three groups:

- (1) an administrative cost of ensuring compliance internally and proving compliance externally: setting up and operating systems for monitoring working time and health assessments;
- (2) the total cost of recruiting additional workers: hiring costs, subsequent direct and indirect employment costs;
- (3) the cost of restructuring the organisation of working time: new shift rotas, provision of additional facilities for rest periods, new agreements with unions/works councils.

There are a number of benefits that the employer may obtain as a consequence of complying with the new rules that will reduce the gross cost of any impact. These are:

- (1) cost reductions resulting from gains in reductions in work interruptions because of fewer accidents and less absenteeism due to ill health;
- (2) productivity gains from individual employees because of better health and less fatigue;
- (3) productivity gains for businesses from the re-organisation of working time negotiated simultaneously with the new regulations;
- (4) savings in overtime premia on reductions in the working time of those currently working more than the maximum hours in the new regulations.

d) *What will the Directive cost?*

The Business Impact Assessment referred to above concludes that a precise estimate of the costs and benefits of implementing the Directive is not possible. Any estimate involves making many judgements on the basis of the partial evidence available and is therefore subject to a wide margin of error. The main costs arise from the additional recruitment costs arising from implementation of the limit on the working week and from the annual leave provisions. The main benefits arise from reductions in overtime premia, from higher individual productivity and from reductions in sick leave and in the number of accidents at work. The best indication of the likely order of magnitude of the overall impact of the proposal is as follows. In the case of the provisions in respect of six sectors and activities, i.e. air, rail, road and, sea transport, sea fishing and other work at sea, the net impact (costs *minus* benefits) is in the range from a net benefit of 1 % to a net cost of 1 % of the average annual earnings of the workers concerned. In the case of doctors in training, the estimate is of

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<sup>5</sup> Business Impact Assessment, Working Time Directive: excluded sectors, Cambridge Policy Consultants, October 1998

the order of 2% of annual average earnings. Insufficient information is available to make any estimate in respect of inland waterways.

5. *Does the proposal contain measures to take account of the specific situation of small and medium-sized enterprises (reduced or different requirements, etc.)?*

No. Flexibility is provided for businesses of all sizes.

### **Consultation**

6. *List the organisations which have been consulted about the proposal and outline their main views.*

The White Paper was given a wide circulation, including all the representative organisations referred to in the Communication concerning the application of the Agreement on social policy<sup>6</sup>. These representative organisations were also consulted during the second phase of consultation. Their positions are set out in the covering Communication. In addition the issues have been discussed over a period of five years in the Joint Committees in the five transport sectors and sea fishing.

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<sup>6</sup> Communication concerning the application of the Agreement on social policy: COM (93) 600 of 14.12.1993

## WORKING DOCUMENT: COMPARATIVE TABLE

**Proposal for a COUNCIL DIRECTIVE amending Directive 93/104/EC of  
23 November 1993 concerning certain aspects of the organization of working time to  
cover sectors and activities excluded from that Directive**

<p><i>COUNCIL DIRECTIVE 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time</i></p> <p>THE COUNCIL OF THE EUROPEAN UNION,</p> <p align="center">[Recitals]</p> <p>HAS ADOPTED THIS DIRECTIVE.</p>	<p align="center"><i>Proposed revisions</i></p> <p align="center">No change</p>
<p>SECTION I SCOPE AND DEFINITIONS</p> <p>Article 1</p> <p>Purpose and scope</p> <p>1. This Directive lays down minimum safety and health requirements for the organization of working time.</p> <p>2. This Directive applies to:</p> <p>(a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and</p> <p>(b) certain aspects of night work, shift work and patterns of work.</p> <p>3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Article 17 of this Directive, with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training;</p>	<p align="center">No change</p> <p align="center">No change</p> <p>3.1. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Article 17 of this Directive.</p> <p><u>3.2. This Directive shall not apply to seafarers, as defined in Directive .././EC concerning the Agreement on the organisation of working time of seafarers.</u></p>

<p>4. The provisions of Directive 89/391/EEC are fully applicable to the matters referred to in paragraph 2, without prejudice to more stringent and/or specific provisions contained in this Directive.</p>	<p>No change</p>
<p>Article 2 - Definitions</p> <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>1. working time shall mean any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;</p> <p>2. rest period shall mean any period which is not working time;</p> <p>3. night time shall mean any period of not less than seven hours, as defined by national law, and which must include in any case the period between midnight and 5 a. m.;</p> <p>4. night worker shall mean:</p> <p>(a) on the one hand, any worker, who, during night time, works at least three hours of his daily working time as a normal course; and</p> <p>(b) on the other hand, any worker who is likely during night time to work a certain proportion of his annual working time, as defined at the choice of the Member State concerned:</p> <p>(i) by national legislation, following consultation with the two sides of industry; or</p>	<p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p>

<p>(ii) by collective agreements or agreements concluded between the two sides of industry at national or regional level;</p>	
<p>5. shift work shall mean any method of organizing work in shifts whereby workers succeed each other at the same work</p>	<p>No change</p>
<p>stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks;</p>	<p>No change</p>
<p>6. shift worker shall mean any worker whose work schedule is part of shift work.</p>	<p>No change</p>
<p>No Provision</p>	<p><u>7. Mobile worker shall mean any worker on board a sea-going fishing vessel flying the flag of a Member State, or employed as a member of travelling or flying personnel by an undertaking which for hire or reward operates transport services for passengers or goods by road, air or inland waterway.</u></p>
	<p><u>8. Offshore work shall mean work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the extraction or exploitation of mineral resources and diving in connection with such activities, whether performed from an offshore installation or a vessel.</u></p>
	<p><u>9. Adequate rest shall mean that the workers concerned have regular rest periods, which are sufficient to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow</u></p>

	<u>workers or to others and that they do not damage their health, either in the short term or in the longer term.</u>
<p>SECTION II MINIMUM REST PERIODS - OTHER ASPECTS OF THE ORGANIZATION OF WORKING TIME</p> <p>Article 3</p> <p>Daily rest</p> <p>Member States shall take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.</p> <p>Article 4</p> <p>Breaks</p> <p>Member States shall take the measures necessary to ensure that, where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation.</p>	<p>No change</p> <p>No change</p> <p>No change</p>

<p>Article 5</p> <p>Weekly rest period</p> <p>Member States shall take the measures necessary to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3.</p> <p>The minimum rest period referred to in the first subparagraph shall in principle include Sunday.</p> <p>If objective, technical or work</p>	<p>Article 5</p> <p>Weekly rest period</p> <p>Member States shall take the measures necessary to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3.</p> <p>Deleted</p>
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<p>organization conditions so justify, a minimum rest period of 24 hours may be applied.</p>	<p>No change</p>
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<p>Article 6</p> <p>Maximum weekly working time</p> <p>Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers:</p> <ol style="list-style-type: none"> <li>1. the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry;</li> <li>2. the average working time for each seven-day period, including overtime, does not exceed 48 hours.</li> </ol> <p>Article 7</p> <p>Annual leave</p> <ol style="list-style-type: none"> <li>1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.</li> <li>2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.</li> </ol>	<p>No change</p> <p>No change</p>
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<p><b>SECTION III NIGHT WORK - SHIFT WORK – PATTERNS OF WORK</b></p> <p>Article 8</p> <p>Length of night work</p> <p>Member States shall take the measures necessary to ensure that:</p> <p>1. normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period;</p> <p>2. night workers whose work involves special hazards or heavy physical or mental strain do not work more than eight hours in any period of 24 hours during which they perform night work.</p> <p>For the purposes of the aforementioned, work involving special hazards or heavy physical or mental strain shall be defined by national legislation and/or practice or by collective agreements or agreements concluded between the two sides of industry, taking account of the specific effects and hazards of night work.</p>	<p>No change</p>
<p>Article 9</p> <p>Health assessment and transfer of night workers to day work</p> <p>1. Member States shall take the measures necessary to ensure that:</p> <p>(a) night workers are entitled to a free health assessment before their assignment and thereafter at regular intervals;</p> <p>(b) night workers suffering from health problems recognized as being connected with the fact that they perform night work are transferred whenever possible to day</p>	

<p>work to which they are suited.</p> <p>2. The free health assessment referred to in paragraph 1 (a) must comply with medical confidentiality.</p> <p>3. The free health assessment referred to in paragraph 1 (a) may be conducted within the national health system.</p>	<p>No change</p>
<p>Article 10</p> <p>Guarantees for night-time working</p> <p>Member States may make the work of certain categories of night workers subject to certain guarantees, under conditions laid down by national legislation and/or practice, in the case of workers who incur risks to their safety or health linked to night-time Working.</p> <p>Article 11</p> <p>Notification of regular use of night workers Member States shall take the measures necessary to ensure that an employer who regularly uses night workers brings this information to the attention of the competent authorities if they so request.</p>	<p>No change</p> <p>No change</p>
<p>Article 12</p> <p>Safety and health protection</p> <p>Member States shall take the measures</p>	

<p>necessary to ensure that:</p> <ol style="list-style-type: none"> <li>1. night workers and shift workers have safety and health protection appropriate to the nature of their work;</li> <li>2. appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers are equivalent to those applicable to other workers and are available at all times.</li> </ol> <p>Article 13</p> <p>Pattern of work</p> <p>Member States shall take the measures necessary to ensure that an employer who intends to organize work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, depending on the type of activity, and of safety and health requirements, especially as regards breaks during working time.</p>	<p>No change</p> <p>No change</p>
<p><b>SECTION IV MISCELLANEOUS PROVISIONS</b></p> <p>Article 14</p> <p>More specific Community provisions</p> <p>The provisions of this Directive shall not apply where other Community instruments contain more specific requirements concerning certain occupations or occupational activities.</p>	<p>No change</p>

<p>Article 15</p> <p>More favourable provisions</p> <p>This Directive shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.</p>	<p>No change</p>
<p>Article 16</p> <p>Reference periods</p> <p>Member States may lay down:</p> <ol style="list-style-type: none"> <li>1. for the application of Article 5 (weekly rest period), a reference period not exceeding 14 days;</li> <li>2. for the application of Article 6 (maximum weekly working time), a reference period not exceeding four months.</li> </ol> <p>The periods of paid annual leave, granted in accordance with Article 7, and the periods of sick leave shall not be included or shall be neutral in the calculation of the average;</p> <ol style="list-style-type: none"> <li>3. for the application of Article 8 (length of night work), a reference period defined after consultation of the two sides of industry or by collective agreements or agreements concluded between the two sides of industry at national or regional level.</li> </ol> <p>If the minimum weekly rest period of 24 hours required by Article 5 falls within that reference period, it shall not be</p>	<p>No change</p>

<p>included in the calculation of the average.</p>	
<p>Article 17</p> <p>Derogations</p> <p>1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Article 3, 4, 5, 6, 8 or 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:</p> <p>(a) managing executives or other persons with autonomous decision-taking powers;</p> <p>(b) family workers; or</p> <p>(c) workers officiating at religious ceremonies in churches and religious communities.</p>	<p>No change</p>
<p>2. Derogations may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry provided that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection:</p> <p>2.1. from Articles 3, 4, 5, 8 and 16:</p> <p>(a) in the case of activities where the worker's place of work and his place of residence are distant from one another or where the worker's different places of work are distant from one another;</p>	<p>No change</p> <p>2.1. from Articles 3, 4, 5, 8 and 16:</p> <p>(a) in the case of activities where the worker's place of work and his place of residence are distant from one another or where the worker's different places of work are distant from one another,</p>

<p>(b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;</p> <p>(c) in the case of activities involving the need for continuity of service or production, particularly:</p> <p>(i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, residential institutions and prisons;</p> <p>(ii) dock or airport workers;</p> <p>(iii) press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services;</p> <p>(iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants;</p> <p>(v) industries in which work cannot be interrupted on technical grounds;</p> <p>(vi) research and development activities;</p> <p>(vii) agriculture;</p> <p>(d) where there is a foreseeable surge of activity, particularly in:</p> <p>(i) agriculture;</p> <p>(ii) tourism;</p>	<p><u>particularly railway staff on board trains</u></p> <p>No change</p> <p>No change</p> <p>(i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, <u>including the activities of doctors in training,</u> residential institutions and prisons;</p> <p>(ii) <u>workers directly concerned with the provision of transport services and other</u> dock or airport workers;</p> <p>No change</p> <p>(iv) gas, <u>oil,</u> water and electricity production, transmission and distribution, household refuse collection and incineration plants;</p> <p>No change</p>
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<p>(iii) postal services;</p> <p>2.2. from Articles 3, 4, 5, 8 and 16:</p> <p>(a) in the circumstances described in Article 5 (4) of Directive 89/391/EEC;</p> <p>(b) in cases of accident or imminent risk of accident;</p> <p>2.3. from Articles 3 and 5:</p> <p>(a) in the case of shift work activities, each time the worker changes shift and cannot take daily and/or weekly rest periods between the end of one shift and the start of the next one;</p> <p>(b) in the case of activities involving periods of work split up over the day, particularly those of cleaning staff.</p> <p>No provision</p>	<p>No change</p> <p>2.4. <u>"from Article 6, for a transitional period of seven years from the date of adoption of this Directive, in the case of doctors in training, where there is an agreement between the employer and workers' representatives. In no case shall the number of weekly hours worked exceed an average of 54 over a four month reference period."</u></p>
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3. Derogations may be made from Articles 3, 4, 5, 8 and 16 by means of collective agreements or agreements concluded between the two sides of industry at national or regional level or, in conformity with the rules laid down by them, by means of collective agreements or agreements concluded between the two sides of industry at a lower level.

Member States in which there is no statutory system ensuring the conclusion of collective agreements or agreements concluded between the two sides of industry at national or regional level, on the matters covered by this Directive, or those Member States in which there is a specific legislative framework for this purpose and within the limits thereof, may, in accordance with national legislation and/or practice, allow derogations from Articles 3, 4, 5, 8 and 16 by way of collective agreements or agreements concluded between the two sides of industry at the appropriate collective level.

The derogations provided for in the first and second subparagraphs shall be allowed on condition that equivalent compensating rest periods are granted to the workers concerned or, in exceptional cases where it is not possible for objective reasons to grant such periods, the workers concerned are afforded appropriate protection.

Member States may lay down rules:

- for the application of this paragraph by the two sides of industry, and
- for the extension of the provisions of collective agreements or agreements concluded in conformity with this paragraph to other workers in accordance with national legislation and/or practice.

No change

4. The option to derogate from point 2 of Article 16, provided in paragraph 2, points 2.1. and 2.2. and in paragraph 3 of this Article, may not result in the establishment of a reference period exceeding six months.

However, Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons or reasons concerning the organization of work, collective agreements or agreements concluded between the two sides of industry to set reference periods in no event exceeding 12 months.

Before the expiry of a period of seven years from the date referred to in Article 18 (1) (a), the Council shall, on the basis of a Commission proposal accompanied by an appraisal report, re-examine the provisions of this paragraph and decide what action to take.

No change

No change

No provision

#### Article 17A

##### Mobile Workers and Offshore Work

1. The provisions of Articles 3, 4, 5 and 8 shall not apply to mobile workers.

2. Member States shall, however, take the necessary measures to ensure that such mobile workers are entitled to adequate rest.

3. Subject to compliance with the general principles relating to the protection of the safety and health of workers, Member States may, for objective or technical reasons or reasons concerning the organisation of work, extend the reference period referred to in Article 16.2 to 12 months, in respect of mobile workers and workers who mainly perform offshore work.

4. Article 7 shall not apply to share-fishermen.

Article 18

Final provisions

1. (a) Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 23 November 1996, or shall ensure by that date that the two sides of industry establish the necessary measures by agreement, with Member States being obliged to take any necessary steps to enable them to guarantee at all times that the provisions laid down by this Directive are fulfilled.

(b) (i) However, a Member State shall have the option not to apply Article 6, while respecting the general principles of the protection of the safety and health of workers, and provided it takes the necessary measures to ensure that:

- no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in point 2 of Article 16, unless he has first obtained the worker's agreement to perform such work,

- no worker is subjected to any detriment by his employer because he is not willing to give his agreement to perform such work,

- the employer keeps up-to-date records of all workers who carry out such work,

- the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety and/or

health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours,

- the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven days, calculated as an average for the reference period referred to in point 2 of

No change

Article 16.

Before the expiry of a period of seven years from the date referred to in (a), the Council shall, on the basis of a Commission proposal accompanied by an appraisal report, re-examine the provisions of this point (i) and decide on what action to take.

(ii) Similarly, Member States shall have the option, as regards the application of Article 7, of making use of a transitional period of not more than three years from the date referred to in (a), provided that during that transitional period:

- every worker receives three weeks' paid annual leave in accordance with the conditions for the entitlement to, and granting of, such leave laid down by national legislation and/or practice, and

- the three-week period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

(c) Member states shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, 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 a reference shall be laid down by the Member States.

3. Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.

No change



**PROPOSAL CONCERNING  
THE ORGANISATION OF WORKING TIME  
FOR MOBILE WORKERS PERFORMING ROAD TRANSPORT  
ACTIVITIES AND FOR SELF-EMPLOYED DRIVERS**

## EXPLANATORY MEMORANDUM

### A. INTRODUCTION

1. On 23 November 1993 the Council of Ministers adopted Directive 93/104/EC<sup>1</sup> on certain aspects of the organisation of working time, based on Article 118A of the EC Treaty. The Directive aims to ensure that workers are protected against adverse effects on their health and safety caused by working excessively long hours, inadequate rest or disruptive working patterns. At the time the Commission's original proposal for the Directive covered all economic sectors and activities. The Council however decided to exclude certain sectors and activities including transport from the Directive with the proviso that separate measures could be adopted for these sectors and activities.
2. On 15 July 1997, the Commission adopted a White Paper<sup>2</sup> on the excluded sectors and activities which set out the need to provide adequate health and safety protection for workers in these sectors and activities as well as four possible approaches for addressing this issue. The Commission expressed a preference for the differentiated approach, namely, to include non-mobile workers within the general directive and formulate sector-specific legislation for mobile workers.
3. Within the road transport sector the social partners, organised in the form of a Joint Committee at Community level, subsequently started to explore in October 1997 how the provisions of Directive 93/104/EC could best be adapted to take account of the particular circumstances applying in their sector. Talks made progress during the following months, with exploratory discussions developing into negotiations. Sufficient points of convergence were reached for representatives of the two sides of industry to draw up the text of a joint agreement. Both sides failed to reach agreement by 30 September 1998. The Commission informed the social partners that in the absence of an agreement by this date, it would come forward with proposals.
4. The Commission is now bringing forward its own proposals to introduce specific working time provisions for this transport sector. This package of measures comprises firstly an extension of the general Working Time Directive, 93/104/EC to cover non-mobile workers within the road transport sector, with annual leave provisions and night-time worker health assessment, adequate rest and maximum annual working time covering all workers; and secondly a proposal for a Directive which will include all mobile workers performing road transport activities, including those in own account and those who operate as self-employed drivers.
5. This proposal forms the second part of this package. Its aim is not only to protect the health and safety of workers, but to avoid possible distortions in competition and to improve road safety. The universal scope of the proposal, including both all mobile workers and self-employed drivers, takes account of the highly competitive nature of this sector and aims to counteract the disintegration of road transport companies into smaller individual units. This approach also reflects the broad application to transport activities of the current Council Regulation (EEC)

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<sup>1</sup> OJ No, L 307, 13.12.93, p. 18

<sup>2</sup> COM (97) 334

3820/85<sup>3</sup> on the harmonization of certain social legislation relating to road transport.

6. The Commission's White Paper stated that 'own account' mobile workers come within the provisions of Directive 93/104/EC. In its subsequent consultation paper of 31 March 1998 addressed to the social partners, the Commission made clear that it would not exclude 'own account' mobile workers from Directive 93/104/EC unless equivalent protection could be afforded by the relevant sectoral legislation. This proposal mirrors the provisions of the Directive in some aspects and is more favourable than the provisions of the general Directive in terms of maximum weekly working time, hence the inclusion of this category of mobile workers within this proposal.
7. In its White Paper, the Commission had originally envisaged incorporating some working time elements within Council Regulation (EEC)3820/85. However since the publication of this discussion paper, it has taken on board firstly, the reservations of the Member States expressed in the October 1997 Council orientation debate, as well as the reluctance on the part of the road transport employers' federation; secondly, the desirability of a broader range of activities to be regulated, not just those that could be linked immediately with the vehicle such as loading and unloading; thirdly, the diversity of arrangements among the Member States regarding working time, reflected in the provisions of Directive 93/104/EC and the need to recognise subsidiarity; and finally, the need to ensure that debate on working time is not distracted by discussions on the revision of the current provisions of the Regulation. For these reasons a separate Directive appears to be a more appropriate instrument.
8. This proposal aims to supplement the provisions of Regulation (EEC) 3820/85. The provisions on breaks and rest periods as well as certain other specific elements within the Regulation will therefore continue to apply to those self-employed drivers and mobile workers concerned. All self-employed drivers and mobile workers outside the scope of the Regulation will come under this proposal's provisions in terms of breaks and rest periods.
9. In this proposal the Commission includes those elements of the text prepared by the social partners on which there was a convergence of views. On areas of divergence, the Commission has put forward a compromise position. This is set out in the following points:
  - Article 3: continued validity of a specific provision in Regulation (EEC) 3820/85, which allows up to 65 hours maximum driving time per week for non-regular international passenger transport. This recognises the flexibility of the Regulation but keeps it bounded by the need to ensure the average weekly working time of 48 hours over a 4-month reference period is maintained and the requirement for a written record of such occasions to be kept;
  - Article 7: Derogations: these apply to the average weekly working time, rest periods and night work, and are on condition that periods of equivalent compensatory rest are granted. The reference period for the average maximum weekly working time may only be extended to 6 months as opposed to a possible 12 months period in the general working time directive. This provides

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<sup>3</sup> OJ No L 370, 31.12 85, p. 1

the balance of a tighter reference period within which the additional flexibility offered by the derogations may be exercised. There is also inclusion of a derogation which allows for a two phase longer reference period of up to 12 months provided there is a lower average working week of 35 hours. This reflects the proposal's aim of encouraging a shorter working week.

- Articles 10 and 11: inclusion of a penalties stipulation and provision of a biennial report on the implementation of the proposed Directive and developments in the field in question.
- Inclusion of self-employed drivers within the scope of the Directive.

## **B JUSTIFICATION FOR ACTION AT COMMUNITY LEVEL**

### **I. Subsidiarity**

- a) What are the objectives of the proposed action in relation to the Community's obligations?

This proposal forms part of a co-ordinated group of measures which seek to extend the provisions of Council Directive 93/104/EC in a sector-specific way to all activities in road transport, taking account under Article 118a of the Treaty of the need to promote the health and safety of workers and under Article 75 of the Treaty of the need to improve working conditions, road safety, and to cause no market distortion.

- b) Does competence for the planned activity lie solely with the Community or is it shared with the Member States?

Article 118a provides that Member States shall pay particular attention to encouraging improvements, especially in the working environment and in order to achieve this objective the Council shall adopt directives on minimum requirements in this field. Article 75 likewise provides that for the purpose of implementing the common transport policy the Council shall lay down common rules.

- c) What is the most efficient solution taking into account the resources of the Community and the Member States?

Working time provisions vary between Member States in form and comprehensiveness. Only at Community level can a coherent set of provisions be established which corresponds to the minimum requirements of Council Directive 93/104/EC while taking account of the particular circumstances of road transport activities. Moreover this proposal reflects the areas of convergence reached between the social partners at European level and ensures such provisions are applied on a Community-wide basis. It is therefore more efficient to implement such measures as part of a Community package, than to seek a piece-meal solution through the Member States.

- d) What means of action are available to the Community?

To achieve the necessary results, Community-wide regulatory action is required. To be consistent with the general measure, Council Directive 93/104/EC, a Directive is appropriate.

e) Is uniform legislation required or would a Directive be sufficient?

Given the different arrangements currently in place in Member States to address this issue, a Directive is appropriate.

## **C. EXPLANATION OF INDIVIDUAL ARTICLES OF THE PROPOSED COUNCIL DIRECTIVE**

### Article 1

Article 1 sets out the purpose and scope of the Directive. Minimum health and safety standards as regards aspects of working time are applied to mobile workers and self-employed drivers. It indicates that as the provisions in this Directive introduce more specific requirements for those persons to whom it is directed than are contained in Directive 93/104/EC, the provisions of this proposal take precedence. This ensures that mobile workers performing road transport activities and employed by undertakings engaged in transport for 'own account' are covered by these provisions. It also clarifies the status of the Directive in relation to the provisions of Council Regulation (EEC) 3820/85.

### Article 2

1. Article 2 sets out the definitions of working time in relation to the Directive. A difference is made between the scope of the term 'working time' for self-employed drivers and for mobile workers. Inclusion of administrative work and standby duty for the former category is considered inappropriate as firstly, the owner of an enterprise has a considerably wider and more varied administrative burden than an employee, and secondly, only an employee would normally be in a position of standby duty. The definition of working time for mobile workers comprises a point of convergence reached by the social partners.
2. The definition of 'standby duty' and 'standby periods' is set out at length, as there is a distinction between the two types of activity. Standby duty involves certain tasks, such as surveillance of the vehicle, when not driving. Standby periods are excluded from working time as they relate simply to periods of availability for work but without any concomitant duties. Thus, for example, when a coach driver takes passengers to the coast, if he has to watch his vehicle during the day, prior to the return journey, this is standby duty. If he may leave his vehicle unsupervised, while remaining available to take up his duties again, this is a standby period.
3. While Member States take different approaches to working time and indeed have different distinctions, the approach taken by the Commission in this instance builds on the work of the social partners at European level. It is this distinction which facilitated agreement on another point of consensus between the social partners, namely the maximum weekly working time of 60 hours per week, an element which is also retained in this proposal.

4. 'Mobile workers' includes all trainees and apprentices reflecting elements in the definition applied in Article 3(a) of Council Directive 89/391/EEC<sup>4</sup> on the introduction of measures to improve the health and safety of workers at work and Article 1 of Council Regulation (EEC)1408/71<sup>5</sup> on social security of migrant workers.
5. The definitions of 'rest period' and 'week' correspond to those used in Council Regulation (EEC) 3820/85.
6. The definitions of 'night work' and 'night workers' largely follow the definitions set out in Council Directive 93/104/EC.

### Article 3

1. The average weekly working time of 48 hours and reference period of 4 months reflect the provisions in Articles 6 and 16 of Council Directive 93/104/EC.
2. The absolute maximum of 60 hours weekly working time reflects the consensus between the social partners in their discussions. Moreover it also reflects the outcome of a study jointly undertaken by the social partners in which it was found that mobile workers performing road transport activities worked 60 hours or less including overtime in a majority of Member States.
3. Council Regulation (EEC) 3820/85 provides certain exceptions which go beyond the standards laid down by this Directive. These exceptions have been taken into account within the body of this Directive in order to ensure coherence between the two instruments. Article 6(1) provides flexibility for non-regular international passenger transport operations, allowing a maximum of 65 hours driving per week. This is permitted within the framework of the average maximum weekly working time and will likewise need to be recorded under the provisions of Article 8 of this Directive.
4. To ensure accuracy in records and that no undue liability attaches to employers in the event that an employee works for two separate firms, an obligation is placed on the employee to inform his or her employers of hours worked in the other firm.

### Article 4

1. To simplify compliance and to ensure coherence with current Community legislation, for those mobile workers and self-employed drivers currently subject to the provisions of Council Regulation (EEC) 3820/85, the provisions concerning breaks laid down in this Regulation will continue to apply.
2. However an additional constraint is imposed for all mobile workers and self-employed drivers in line with the provisions of the general working time directive, namely a compulsory break after up to 6 hours work. This provision

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<sup>4</sup> OJ L No. 183, 29.6.1989, p.1

<sup>5</sup> OJ L No. 149, 5.7.1971, p. 2

reflects the agreed framework set out by the social partners and is so constructed as to be compatible with the provisions of Council Regulation (EEC) 3820/85.

#### Article 5

1. While the rest provisions of Council Regulation (EEC) 3820/85 will continue to apply, those in Council Directive 93/104/EC will be extended to other mobile workers not subject to the Regulation.
2. The additional clause for a reduction in daily rest by one hour for other mobile workers was accepted by both sides of the industry to accommodate the specific circumstances of transport activities.

#### Article 6

1. The provisions on night workers reflect the agreement reached between the social partners. It reflects the compromise position where the absolute of 8 hours within a 24 hour period within the Directive has been relinquished to gain a slightly broader definition of a night worker and a tightly defined common reference period.
2. Compensation and anti-discrimination measures were also included as a non-contentious issue in the social partners' draft agreement and are preserved in this text. Compensation is conditional on it not endangering road safety and reflects the provisions in Article 10 of Council Regulation (EEC) 3820/85.

#### Article 7

1. This Article is broadly similar to the format of derogations provided in the general working time directive whereby Member States may derogate from the provisions of the Directive by means of national legislative or administrative measures or by collective agreements or agreements between the two sides of industry, provided there is provision for equivalent compensatory rest. The option of individual company agreements is not included as this Directive is sector-specific, setting minimum standards for all road transport activities and cannot therefore allow the possibility of a wholesale lowering of basic social protection within the industry.
2. Member States may derogate from the reference period for the average maximum working time from four to six months; there is no derogation from provisions on breaks. Both these measures are tighter than the general working time directive and reflect the priority which should be given to road safety. An additional derogation is inserted in recognition of the reduction of average weekly working time which several Member States propose. Its inclusion reflects the objective of the proposal to encourage the adoption of a shorter working week.

3. Schedules for regular passenger transport services may normally include shorter break periods and this exemption reflects this arrangement while still adhering to the minimum composite time specified in Article 4.

#### Article 8

In order for workers to be aware of their rights under this Directive and in keeping with other health and safety legislation, this Directive and the transposing national legislation and relevant agreements should be displayed appropriately by the employer. The obligation to keep a two-year record of instances when the 48-hour average maximum weekly working time is breached corresponds to the provisions in Article 18(1)(b) of the general Working Time Directive.

#### Article 9

This mirrors the provision in Article 15 of the general directive and reinforces the view that this proposal provides a baseline for health and safety provisions for the sector.

#### Article 10

This is a standard provision specifying the provision of penalties for this Directive.

#### Article 11

1. The final provisions again reflect those contained in Article 18 of the general directive.
2. As the focus of this Directive is sector-specific and is linked to the provisions within Council Regulation (EEC) 3820/85, it seems appropriate to provide a more comprehensive report on the application of both measures by Member States within a common time limit. This will allow a more timely and global overview of social issues within the Community road transport sector.

#### Article 12

This is a standard provision.

# **PROPOSAL FOR A COUNCIL DIRECTIVE**

concerning the organisation of working time for mobile workers  
performing road transport activities and for self-employed drivers

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Articles 75 and 118a thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

In co-operation with the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Whereas Article 75 of the Treaty provides that the Council shall adopt, amongst other, common rules applicable to road transport as well as measures designed to improve road safety; whereas this article provides the proper legal base in particular for the adoption of common rules concerning working time for self-employed drivers in road transport;'

Whereas Article 118a of the Treaty provides that the Council shall adopt by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers;

Whereas Council Regulation (EEC) No. 3820/85<sup>4</sup> on the harmonization of certain social legislation relating to road transport has laid down common rules on driving times and rest periods for drivers; whereas this Regulation does not cover other aspects of working time for road transport;

Whereas Council Directive 93/104/EC<sup>5</sup> concerning certain aspects of the organisation of working time has laid down minimum safety and health requirements for the organisation of working time applicable to all sectors of activity, both public and private with the exception of air, rail, road, sea, inland waterway and lake transport amongst others;

Whereas the Council recognised in the preamble to that Directive that it may be necessary to adopt separate measures with regard to the organisation of working time in certain sectors and activities which are excluded from the scope of the Directive;

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<sup>4</sup> OJ No L 370, 31.12.85, p.1

<sup>5</sup> OJ No L 307, 13.12.93, p.18

Whereas it is therefore necessary in order to ensure improved road safety, to avoid distortion of competition, and to promote enhanced working conditions for road transport activities, that all mobile workers performing road transport activities and self-employed drivers should operate under a set of minimum standards on working time;

Whereas the provisions in this Directive are more specific to road transport than certain provisions in Directive 93/104/EC as amended and hence under Article 14 of the latter Directive these provisions take precedence;

Whereas, in order to improve road safety, to avoid distortion of competition and to ensure the safety and health of these mobile workers and self-employed drivers, they must be granted minimum daily and weekly periods of rest, and adequate breaks; whereas it is also necessary to place a maximum limit on weekly working hours;

Whereas it is necessary to indicate that the provisions relating to rest periods and breaks within Council Regulation (EEC) 3820/85 on the harmonisation of certain social legislation relating to road transport continue to apply to certain mobile workers and self-employed drivers;

Whereas the above Regulation's provisions on driving time are supplemented by the working time provisions of this Directive;

Whereas, in spite of intensive negotiations between the social partners, an agreement has not been possible in respect of mobile workers in road transport, to be put into effect by means of a Council decision on a proposal from the Commission, in accordance with Article 4(2) of the Agreement on Social Policy;

Whereas Directive .././EC of dd/mm/yy amends Directive 93/104/EC to ensure its application to non-mobile workers in the sectors and activities currently excluded, and to provide basic protection to mobile workers performing road transport activities; whereas this basic protection includes the existing rules on annual leave and certain basic provisions for night workers including health assessments;

Whereas 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;

Whereas as a consequence there is a need to limit the duration of periods of night work, including overtime, and to ensure records of working time are kept by employers for night workers and for mobile workers exceeding the 48-hour average weekly maximum;

Whereas night workers should receive appropriate compensation for their activity and should not be disadvantaged as regards training and promotion opportunities;

Whereas Regulation (EEC) 3820/85 permits drivers covered by Article 6 paragraphs 4 & 5 a driving time of up to 65 hours per week; whereas the drivers weekly working time is limited to 60 hours per week according to Article 3 of this Directive; whereas the drivers covered by Article 6 paragraphs 4 & 5 of cited Regulation (EEC) 3820/85 will have to be able to continue driving up to 65 hours, provided that the average maximum weekly working time of 48 hours over 4 months is not exceeded.

Whereas the Commission should monitor the implementation of this Directive and developments in this field in the Member States and submit to the Council, the European Parliament and the Economic and Social Committee a report on the application of the rules;

Whereas it is necessary to provide that certain provisions may be subject to derogations implemented, according to the case, by the Member States or the two sides of industry; whereas as a general rule, in the event of a derogation, the workers concerned must be given equivalent compensatory rest periods;

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of the proposed action as outlined above, cannot be adequately achieved by the Member States, in that the objective is to ensure that all workers in the Community enjoy adequate protection of their health and safety, with regard to working time; whereas, in view of the scale and impact of the proposed action these objectives can best be achieved at Community level by the introduction of minimum provisions applicable to the entire European Community; whereas the present Directive constitutes no more than the minimum necessary to achieve these objectives;

HAS ADOPTED THIS DIRECTIVE:

### **Article 1** **Purpose and Scope**

1. The purpose of this Directive is to establish minimum health and safety standards in relation to the organisation of working time in road transport and to improve road safety.
2. This Directive applies to all mobile workers performing road transport activities employed by undertakings established in a Member State and to self-employed drivers established in a Member State.
3. This Directive contains more specific Community provisions as regards mobile workers performing road transport activities and therefore, pursuant to Article 14 of Council Directive 93/104/EC, the former's provisions take precedence over the relevant provisions of Council Directive 93/104/EC as amended by Council Directive .../EC.
4. This Directive applies without prejudice to the provisions of Regulation (EEC) 3820/85.

## **Article 2**

### **Definitions**

1. For the purposes of this Directive, 'working time' means:
  - (a) in the case of self-employed drivers, the time during which they carry out the following activities:
    - (i) driving;
    - (ii) loading and unloading;
    - (iii) supervising passengers getting in/out of the bus/coach;
    - (iv) cleaning of the vehicle;
    - (v) security inspection of the vehicle and the load;
    - (vi) other work to ensure the safety of the vehicle, the load or the passengers;
    - (vii) technical maintenance of the vehicle;
  - (b) in the case of mobile workers, the time from the beginning to the end of work, that is all activities or standby duty, excluding breaks.

Activities include, in particular:

- (i) driving;
    - (ii) loading and unloading;
    - (iii) supervising passengers getting in/out of the bus/coach;
    - (iv) cleaning of the vehicle;
    - (v) security inspection of the vehicle and the load;
    - (vi) other work to ensure the safety of the vehicle, the load or the passengers;
    - (vii) technical maintenance of the vehicle;
    - (viii) administrative work;.
2. "Standby duty" means the time during which the mobile worker is at his place of work, ready to take up full working duties, where appropriate on his own initiative, and generally with certain tasks associated with being on duty.

"Standby period" means the time during which the mobile worker has no duties, while available for taking up work. Standby periods must be known in advance by the mobile worker in accordance with the conditions agreed between social partners at the level and under the terms provided in the legislation of the Member States.

Without prejudice to the legislation of the Member States or agreements between social partners requiring such periods to be compensated or limited, stand-by periods shall not be considered as working time in the meaning of Articles 3 and 6 of this Directive.
  3. "Mobile workers" are all those workers, including trainees and apprentices, who are employed by an undertaking, perform road transport activities and form part of the travelling personnel.
  4. "Rest period" means any uninterrupted period of at least one hour during which the mobile worker or self-employed driver may freely dispose of his time.

5. “Week” means the period between 00.00 hours on Monday and 24.00 hours on Sunday.
6. “Night time” means a period of at least seven hours, as defined by national law, and in any case encompassing the period between midnight and 5 a.m.
7. “Night work” means work during a period of work which includes more than two hours of night time.
8. “Night workers” means mobile workers or self-employed drivers who:
  - (i) usually perform night work on rotating shifts because of their work schedule, or:
  - (ii) perform a certain proportion of their annual working time during night time. This proportion shall be defined by the legislation of the Member States in consultation with the social partners.

### **Article 3**

#### **Maximum weekly working time**

Member States shall take the measures necessary to ensure that:

1. the average weekly working time may not exceed 48 hours. The maximum weekly working time can be extended to 60 hours only if within four months an average of 48 hours per week is not exceeded. This is without prejudice to Article 6, paragraphs 4 & 5, of Regulation (EEC)3820/85, provided that the self-employed drivers and mobile workers concerned do not exceed the average maximum weekly working time of 48 hours over 4 months.
2. for mobile workers, working time for different employers is the sum of the working hours. The mobile worker shall inform the employer concerned in writing of working time performed for another employer.

### **Article 4**

#### **Breaks**

Member States shall take the measures necessary to ensure that, without prejudice to the level of protection provided by Council Regulation (EEC) No. 3820/85 on the harmonization of certain social legislation relating to road transport, mobile workers shall in no circumstances be employed and self-employed drivers shall in no circumstances carry out the activities referred to in Article 2(1) for more than six consecutive hours without a break. Working time shall be interrupted by breaks 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. The breaks referred to in the first sentence may be divided up into periods of at least 15 minutes.

## **Article 5**

### **Rest periods**

1. Those self-employed drivers and mobile workers subject to Council Regulation (EEC) No. 3820/85 shall have the rest periods provided therein.
2. Member States shall take the measures necessary to ensure that self-employed drivers and mobile workers other than those referred to in paragraph 1 have an uninterrupted period of rest at the end of their daily work of at least 11 hours.
3. The duration of the period of rest referred to in paragraph (2) may be reduced by up to one hour, if each such reduction is compensated either within the following calendar month or within four weeks by the extension of another rest period to at least 12 hours.
4. Member States shall take the measures necessary to ensure that for self-employed drivers and mobile workers other than those referred to in paragraph 1, after no more than 6 consecutive daily working periods, the period of rest in paragraph (2) shall be extended by 24 consecutive hours to form a period of weekly rest.

## **Article 6**

### **Night workers**

Member States shall take the measures necessary to ensure that:

1. the daily working time of a night worker may not exceed eight hours. It may be extended to ten hours only if an average of eight hours a day is not exceeded within two months; for periods in which night workers are not requested to perform night work, Article 3 shall apply;
2. compensation for night work shall be given in accordance with the national legislative measures, collective agreements and/or national practice, but such compensation is permitted only on condition that it is of such a kind as not to endanger road safety; and
3. those mobile workers who are night workers shall have the same access to further training and opportunities for promotion as other workers.

## **Article 7**

### **Derogations**

1. Derogations from Articles 3, 5, and 6 may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry, provided that the workers concerned are afforded equivalent periods of compensatory rest.
2. The option to derogate from Article 3 may not result in the establishment of a reference period exceeding six months, for the average maximum weekly working

time of 48 hours. In addition, Member States may allow derogations from Article 3 provided that the maximum average weekly working time is reduced as follows:

- to 39 hours on average, over a reference period of up to 9 months; and
- to 35 hours on average, over a reference period of up to 12 months.

3. For regular passenger transport services over distances of less than 50 kilometres, breaks or layover time may be split into periods of less than 15 minutes duration.

## **Article 8**

### **Information and records**

1. Member States shall take the measures necessary to ensure that the employer of mobile workers takes the following action:
  - a. the employer shall post or display in an appropriate place in the undertaking's premises, a copy of this Directive, of the relevant national rules and statutory orders and of the collective agreements and company agreements, if applicable, made on the basis of this Directive; and
  - b. the employer shall record the working time of mobile workers who do more than 48 hours of work per week or, for night workers, more than 8 hours work per day. These records shall be kept for at least two years.
2. Member States shall take measures necessary to ensure that the self-employed driver shall maintain a record of his working time when he does more than 48 hours of work per week or, if he is a night worker, more than 8 hours work per day. These records shall be kept for at least two years.

## **Article 9**

### **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 mobile workers or self-employed drivers, or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the health and safety of mobile workers.

## **Article 10**

### **Penalties**

Member States shall determine the range of penalties applicable for infringements of national provisions made in implementation of this Directive and shall take all necessary steps to ensure that they are enforced. The penalties must be effective, commensurate with the infringement, and must constitute a sufficient deterrent. Member States shall notify these provisions to the Commission by the date mentioned in Article 11(1) at the latest, and any subsequent amendment thereto in good time.

**Article 11**  
**Final Provisions**

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after entry into force] or shall ensure by that date that the two sides of industry establish the necessary measures by agreement, with Member States being obliged to take any necessary steps to enable them to guarantee at all times that the provisions laid down by this Directive are fulfilled.
2. When Member States adopt the measures referred to in paragraph 1, 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 a reference shall be laid down by the Member States.
3. Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to mobile workers and self-employed drivers.
4. Member States shall report to the Commission every two years on the implementation of this Directive indicating the viewpoints of the two sides of industry. The information must reach the Commission not 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 Council Regulation (EEC) No. 3820/85.
5. 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 Council, the European Parliament and the Economic and Social Committee.
6. Member States shall communicate to the Commission the texts of the provisions of national law already adopted or being adopted in the field governed by this Directive.

**Article 12**

This Directive is addressed to the Member States.

Done at Brussels, .....

*For the Council*

*The President*

## **IMPACT ASSESSMENT FORM**

### **THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES**

#### **Title of the proposal:**

Proposal for a Council Directive concerning the organisation of working time for mobile workers performing road transport activities and for self-employed drivers.

#### **Document reference number 98018**

#### **The proposal**

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are the main aims?

The Community legislation is based on Articles 75 and 118a of the Treaty. The organisation of the transport market is one of the essential factors in the implementation of the common transport policy. The provision of common standards for working time in road transport has become increasingly important given the predominance of this mode within the Community, the liberalisation of market access and the need to ensure that there is no distortion of competition between operators. Establishing minimum norms for all transport activities will prevent a potential disintegration of the road transport industry, will improve road safety and enhance working conditions for mobile workers and the self-employed.

The legislation also reflects a Commission commitment to propose EU legislation on working time for those sectors formerly excluded from the general directive on working time, Directive 93/104/EC, and seeks to do so for road transport by putting forward as part of a package of measures a proposal for a Directive which tailors the provisions of the general directive to the specific circumstances of mobile workers and the self-employed.

The proposal aims to take forward the discussions between the social partners at European level in this area, firstly by including those points of convergence within the proposal and secondly by setting out a position on those points of disagreement which is consistent with current Community legislation and respects the underlying purpose of the measure. This proposal therefore establishes a 48-hour average maximum working week and a ceiling of 60 hours for weekly working time. Minimum breaks and rest periods are set out as well as provisions for night time working. Definitions of working time are included which correspond to those agreed between the social partners.

A Community instrument is the only way to reconcile the differing arrangements currently applicable in the Member States by establishing a common basis, thereby providing a minimum level of health and safety protection with the concomitant benefits of improved road safety, better working conditions and avoidance of market distortion.

## The impact on business

### 2. Who will be affected by the proposal?

- Which sectors of business?

The proposal will affect all mobile workers and self-employed in road haulage and road passenger transport.

- Which sizes of business (what is the concentration of small and medium-sized firms)?

According to a 1995 report prepared by the social partners at European level, road transport activities provide an estimated total of 6.5 million jobs in the European Union. There are about 1.2 million jobs in passenger transport, some 2.1 million in road haulage for hire or reward and 3-3.5 million in own account transport. Road transport operators in the Community have an average of about 4,4 vehicles in operation. In 1990, 78% of the undertakings in the profession in the Member States for which data is available had between 1 and 5 vehicles in operation, 11% between 6 and 10 and 11% had more than 11 vehicles. Therefore the concentration of SMEs in the road transport sector is high.

- Are there particular geographical areas in the Community where these businesses are found?

The figures are more or less the same in all Member states, with the exception of Belgium, the Netherlands and the United Kingdom where the number of undertakings with more than 5 vehicles is somewhat higher, whereas in the Mediterranean countries as well as Sweden and Finland, more than 90% of the operators own between 1 and 5 vehicles.

### 3. What will businesses have to do to comply with the proposal?

The transport operator will have to organise his business in such a way that the maximum working time limits are respected and minimum rest periods and breaks are provided for his mobile work force. If the operator is self-employed, he should arrange his work pattern so as to conform to the standards laid down. In both instances, records will have to be kept for two years concerning periods whenever the average maximum limit for weekly working time is exceeded, as well as for exceptional cases set out in the derogations. For employers there is also the obligation to display the relevant legislation and agreements for the information of his mobile workers.

4. What economic effects is the proposal likely to have?

- on employment

As regards mobile workers in those Member States in which the proposals will have little impact, similar measures are already applied at national level. However where no such measures or measures of a lower level exist, the proposal may lead to increased employment. Employee health and safety will be improved, leading to greater long-term stability in employee output. For those operators with tight margins, the reduction in output may cause them to cut back on operations rather than consider further staff. Therefore the legislation may well cause some consolidation within the industry in some Member States.

As regards the self-employed, this legislation seeks to put them broadly on an equal footing with other road transport activities in terms of working time provisions, while allowing them additional flexibility in terms of what is defined as working time. The legislation restricts the time spent in connection with the vehicle and requires a small amount of paperwork, but given that they are already restricted in the driving time and rest periods under Council Regulation (EEC) 3820/85 the legislation should not unduly affect their operations. Moreover, from a road safety point of view, placing a limit on activities other than driving undertaken by the self-employed provides a means of ensuring that excessive fatigue does not impair the person's driving. It may therefore enhance the quality of service delivered and ensure continued employment.

- on investment and creation of new businesses

It is possible that the proposals will result in an increased, albeit limited, investment in new vehicles. Nevertheless, the proposal is unlikely to have a significant impact on investment, nor should it necessarily hinder the creation of new businesses, since it only requires a reorganisation of activities to take account of some basic minima and maxima. These standards will ensure a healthier workforce which is able to give of its best and for the self-employed provide a framework within which they can continue their activities.

- On the competitive position of businesses

The proposal aims to create a level playing field for businesses by providing a common minimum set of working time requirements for transport activities, thus reducing any distortion of competition.

- Cost-benefit in quantitative and qualitative terms

The Commission arranged for a Business Impact Assessment to be undertaken<sup>1</sup> to assess the potential impact of the Working Time Directive on the sectors and activities currently excluded from the Directive, including road transport.

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<sup>1</sup> Business Impact Assessment, Working Time Directive: excluded sectors, Cambridge Policy Consultants, October 1998

The study shows that the costs which face the businesses fall into three groups:

- (1) an administrative cost of ensuring compliance internally and proving compliance externally: setting up and operating systems for monitoring working time;
- (2) the total cost of recruiting additional workers: hiring costs, subsequent direct and indirect employment costs;
- (3) the cost of restructuring the organisation of working time: new shift rotas, provision of additional facilities for rest periods, new agreements with unions/works councils.

There are a number of benefits that the employer may obtain as a consequence of complying with the new rules that will reduce the gross cost of any impact. These are:

- (1) cost reductions resulting from gains in reductions in work interruptions because of fewer accidents and less absenteeism due to ill health;
- (2) productivity gains from individual employees because of better health and less fatigue;
- (3) productivity gains for businesses from the re-organisation of working time negotiated simultaneously with the new regulations;
- (4) savings in overtime premia on reductions in the working time of those currently working more than the maximum hours in the new regulations.

– What will the Directive cost?

The Business Impact Assessment referred to above concludes that a precise estimate of the costs and benefits of implementing the Directive is not possible. Any estimate involves making many judgements on the basis of the partial evidence available and is therefore subject to a wide margin of error. The main costs arise from the additional recruitment costs arising from implementation of the limit on the working week and from the annual leave provisions. The main benefits arise from reductions in overtime premia, from higher individual productivity and from reductions in sick leave and in the number of accidents. The best indication of the likely order of magnitude of the net impact of the proposal is of the order of a net cost of 0.2% of the wage bill.

The absence of a comprehensive social framework for road transport has caused severe disruption to this sector in recent years and has led to major unforeseen and unquantifiable costs, including bankruptcy, not only for the road transport sector but also for a considerable number of businesses dependent on road transport for distribution. This proposal seeks to introduce measures which will rectify this deficit.

On a broader basis, the Commission's communication, Promoting road safety in the EU: the programme for 1997 – 2001<sup>2</sup>, indicates the considerable cost to society of road accidents. ECU 1 million has been calculated as a conservative estimate of the cost of one fatality in terms of direct economic costs (lost output, medical and insurance costs) and does not take into account the intangible costs of pain, grief and suffering. There are currently about 45,000 fatalities per year in the EU, and on average 18 % of fatal accidents (which may result in more than one fatality) involve

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<sup>2</sup> COM(97) 131 final of 9.4.97, p.5

trucks or coaches. Thus there is a significant cost to society. The correlation between accidents and fatigue caused by excessive working hours and night time working within road transport has been highlighted in a recent study for the Commission<sup>3</sup>, which builds on previous generally recognised work.

5. Does the proposal contain measures to take account of the specific situation of small and medium sized firms (reduced or different requirements etc)?

The proposal does not contain specific measures to this effect. However it does define working time more restrictively for the self-employed, retains the rules of Regulation (EEC) 3820/85 for them in terms of breaks and rest periods and exempts them from obligations in terms of display of information.

### Consultation

6. List of organisations which have been consulted concerning the proposal and herewith the summary of their main views:

On 15 July 1997 the Commission adopted a White Paper on sectors and activities excluded from Directive 93/104/EC concerning certain aspects of the organisation of working time, in which it indicated the broad thrust of its proposals for all the excluded sectors including road transport. The ETUC (European Trades Union Confederation), in a composite reply covering all sectors and activities, including those of the FST (Federation of Transport Workers' Unions) representing road transport workers amongst others, supported the Commission's preference for a differentiated approach to the introduction of working time and argued that exclusions were unnecessary given the flexibility of the general directive. UNICE (Union of Industrial and Employers' Confederation of Europe), for the employers believed there was no need for further Community legislation because "all Member States have legislation which provides protection in respect of working time and in most countries this is complemented by collective agreements" and "there is already a legal framework at EU level to deal with these questions and the health and safety problems in road transport are already addressed by Regulation 3820/85". IRU (International Road Union) confirmed their view that a better application of the existing rules would be preferable to new rules. A binding approach should be based on the joint views of the social partners at the level of individual modes of transport.

IRU and FST subsequently decided to commence exploratory talks and in the course of such talks the Commission issued its second phase consultation to the social partners during April 1998. The social partners issued a joint letter on 27 May 1998 to the Commission indicating that they were progressing in discussions with a view to negotiating an agreement on working time on the basis of the principles of Directive 93/104 EC, the promotion of fair

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<sup>3</sup> Le lien entre la durée du travail des conducteurs routiers et la sécurité routière au sein de l'Union Européenne, Universität-Gesamthochschule Kassel, Institut für Arbeitswissenschaft, June 1997.

competition and taking due account of the specific characteristics of road transport.

Despite a last minute plenary and the intervention of a mediator there was no agreement by the Commission deadline of 30 September 1998. Both sides indicated the list of problems each side had with the text of the agreement, which related to the definitions of working time and standby duty/period, and fundamentally, the extent of derogations from the agreement.

The Commission proposal has for the most part taken forward the areas of agreement within the text and set out a compromise position as regards derogations. It has continued with the definitions set out in the text, as these were only put in question by some delegations in the final stages of talks, and represent the quid pro quo for a 60 hour maximum weekly working time limit. The difficulty with such definitions is the close link with pay arrangements in the different Member States, but it should be remembered that the provisions of this Directive do not seek to influence such discussions whatsoever.

The Commission text therefore represents a further step, building on the detailed discussions of the social partners over the past year and bridges the final gap between the two sides.

**PROPOSALS CONCERNING THE  
ORGANISATION OF WORKING TIME OF SEAFARERS**

## **Introduction to the proposals**

1. These proposals deal with the organisation of working time in maritime transport.
2. The White Paper on the sectors and activities excluded from the Working Time Directive (COM(97) 334) noted that long working hours at sea is common. However, a systematic approach to limitation of these hours had hitherto been difficult because of competition from ships flying the flags of third countries. Indeed the decline in employment in the EU-registered fleet - by over 30% between 1985 and 1995 - has been a major preoccupation of both ship-owners and seafarers over recent years. For this reason, and because this is a global industry, there has been concern, within the Joint Committee, to reach agreement in the international organisations, before tackling intra-Community issues.
3. Agreement was reached in the International Maritime Organisation in 1995 on the adoption of the revised Standards of Training, Certification and Watchkeeping (STCW) Convention in relation to minimum rest periods for watchkeepers. This provides for minimum daily rest periods of 10 hours per 24, which can be divided into no more than 2 periods, including one period of at least 6 consecutive hours; and for weekly rest periods of not less than 70 hours. On 25 May 1998, the Council adopted Directive 98/35/EC amending Directive 94/58/EC on the minimum level of training of seafarers. This reflects the provisions of the 1995 STCW Convention in respect of minimum rest periods for watchkeepers in the deck and engine departments.
4. In October 1996, the International Labour Organisation (ILO) adopted a new Convention (N° 180) on hours of work in shipping. The Convention provides, in respect of seafarers on board ship, either maximum working hours (14 hours a day and 72 hours a week) or minimum rest periods (10 hours a day and 77 hours a week). The Conference decided on a mechanism which would allow for the provisions of Convention N° 180 to be enforced upon non-EU registered ships operating in EU waters by means of Port State Control.
5. In order to take account of the international nature of the industry, the Commission, in collaboration with the social partners in the industry, wishes to move forward simultaneously with measures to protect the health and safety of seafarers working on ships flying the flag of EU Member States and those working on ships from third countries. Accordingly the following proposals are attached.
6. A proposal for a Directive implementing the European Agreement on the working time of seafarers, concluded on 30<sup>th</sup> September 1998.
7. A proposal for a Directive concerning the enforcement of seafarers' hours of work on board ships using Community ports.
8. In addition the Commission has prepared a Recommendation to Member States on the ratification of ILO Convention 180 concerning seafarers' hours of work and the

manning of ships and the Protocol to ILO Convention 147 on Merchant Shipping (Minimum Standards). This recommendation, which is addressed separately to the Member States, is attached for information.

9. As the Directive implementing the European Agreement on the working time of seafarers is based on the Agreement on Social Policy, it does not, therefore, apply to the United Kingdom (unless it is adopted under Article 139 of the Amsterdam Treaty, after its coming into force). The Commission will, therefore, submit to the Council at the appropriate time, a proposal for a Council Directive to extend the Social Protocol Directive to the United Kingdom.

**PROPOSAL FOR A  
COUNCIL DIRECTIVE**

**CONCERNING THE AGREEMENT ON  
THE ORGANISATION OF WORKING TIME OF SEAFARERS  
CONCLUDED BY THE EUROPEAN COMMUNITY SHIPOWNERS'  
ASSOCIATION (ECSA) AND THE FEDERATION OF TRANSPORT  
WORKERS' UNIONS IN THE EUROPEAN UNION (FST)**

(presented by the Commission)

## INTRODUCTION

### AIM OF THE PROPOSAL

1. The purpose of this proposal for a Directive is to put into effect the annexed Agreement on the organisation of working time of seafarers concluded on 30 September 1998 between the organisations representing management and labour in the maritime sector (ECSA and FST).
2. When the “White Paper on sectors and activities excluded from the Working time Directive” was sent to the social partners, they were asked to treat it as the first round of formal consultation in respect of working time in the sectors and activities concerned. On 31 March 1998, the Commission launched a second phase consultation process on the content of its envisaged proposal, following the responses to the White Paper.
3. Following the second phase consultation, the organisations representing management and labour at European level, the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) concluded a European Agreement on the organisation of Working Time of Seafarers on 30 September 1998. They forwarded the agreement to the Commission, asking for it to be implemented by a Council decision on a proposal from the Commission in accordance with Article 4(2) of the Agreement on social policy.

### EXAMINATION OF THE AGREEMENT

4. In its Communication concerning the application of the Agreement on social policy<sup>1</sup>, the Commission stressed that “by virtue of its role as guardian of the Treaties the Commission will prepare proposals for decisions to the Council following consideration of the representative status of the contracting parties, their mandate and the “legality” of each clause in the collective agreement in relation to Community law, and the provisions regarding small and medium-sized undertakings set out in Article 2(2). At all events, the Commission intends to provide an explanatory memorandum on any proposal presented to the Council in this area, giving its comments and assessment of the agreement concluded by the social partners”.

#### **I. REPRESENTATIVENESS OF THE CONTRACTING PARTIES AND THEIR RESPECTIVE MANDATES**

5. The organisations which are signatory to the agreement are FST, the Federation of Transport Workers' Unions in the European Union, and ECSA, the European Community Shipowners' Associations. The two organisations have been engaged in the Joint Committee on Maritime Transport since its creation in 1987. The activities

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<sup>1</sup> COM(93) 600, 14.12.1993 .

of the Joint Committee have resulted in numerous joint opinions concerning maritime policy issues and in particular its social implications.

6. According to material submitted by the signatory parties, they relate to a specific sector and are organised at European level. Moreover, they consist of organisations which are themselves an integral and recognised part of Member State social partners structures, which have the capacity to negotiate agreements and are representative of all Member States. Finally, they have appropriate structures to ensure their effective participation in implementing the Agreement on social policy.
7. In particular, ECSA represents the national shipowners' associations of all Member States. They are in turn by far the predominant employers' organisations representing national flag shipowners. The FST represents the overwhelming majority of European seafarers. All its affiliated organisations are directly involved in collective bargaining at national level.
8. The organisations therefore meet the criteria of social partner at European level, as laid down in the 1993 Commission Communication referred to above and have, subsequently, been included in the list of recognised social partners organisations in annex I attached to the Commission Communication<sup>2</sup>: ECSA as a sectoral employers organisation; FST as a European Industry Committee with ETUC affiliation.

## **II. PROVISIONS REGARDING SMALL AND MEDIUM-SIZED ENTERPRISES**

9. Article 2(2) of the Agreement on Social Policy provides that legislation on social policy shall avoid imposing administrative, financial and legal constraints in a way which hold back the creation and development of small and medium-sized undertakings.
10. The agreement does not make a distinction between workers of small or medium-size enterprises and other workers. However a number of clauses (3, 4 and 5(6)) provide for normative options, exceptions or a degree of flexibility to be laid down by national legislation or collective agreements.
11. These provisions show the social partners are keen to encourage new flexible ways of organising working time which are better suited to the changing needs of commercial maritime operations and which should take the needs of both enterprises and workers into account.
12. The Commission therefore concludes that the agreement complies with the provisions concerning small and medium-sized enterprises.

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### **III. “LEGALITY” OF THE CLAUSES OF THE AGREEMENT**

13. The Commission has carefully examined each of the clauses of the agreement and does not find any provisions contrary to Community law. The fact that the agreement provides for obligations on the Member States does not undermine its legality. On the contrary, it follows from the second declaration annexed to the Agreement on social policy<sup>3</sup> that the second of the arrangements for applying agreements between management and labour at Community level (i.e. by a Council decision on a proposal from the Commission) is likely to create obligations for the Member States. The obligations imposed on Member States do not derive directly from the agreement between the social partners but from the arrangement for applying the agreement. Section (IV) contains the Commission’s assessment of the content of the agreement.

### **IV. ASSESSMENT OF THE AGREEMENT**

14. By laying down minimum requirements on working time, the European Agreement on the organisation of working time for seafarers implements points 7, 8 and 19 of the Community Charter of the Fundamental social Rights of workers.
15. The Commission considers that the adaptation, flexibility and organisation of working time are crucial aspects as regards both workers conditions and the dynamism of firms and play a considerable role in determining the situation of the labour market and the creation of employment.
16. Within this context, the Commission wholeheartedly endorses the aim of the working time Agreement concluded by ECSA and the FST and sees it as an important step in three respects.
17. Firstly the introduction of Community minimum working time requirements for seafarers constitutes a big step forward in creating a minimum set of fundamental rights of workers.
18. Secondly, the Agreement strikes a balance between the need to ensure adequate protection for the health and safety of seafarers with regard to working time and the requirements to allow adequate operating flexibility to seagoing ships engaged in commercial maritime operations and to maintain appropriate public safety standards. In this respect the Agreement is in line with the Commission Medium Term Social

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<sup>3</sup> “The eleven High Contracting Parties declare that the first of the arrangements for application of the agreements between management and labour at Community level - referred to in Article 4(2) - will consist in developing, by collective bargaining according to the rules of each Member State, the content of the agreements, and that consequently this arrangement implies no obligation on the Member States to apply the agreements directly or to work out rules for their transposition, nor any obligation to amend national legislation in force to facilitate their implementation.”

Action Programme 1995-1997, the White Paper on sectors and activities excluded from the working time Directive,<sup>4</sup> the Commission Common Transport Policy Action Programme<sup>5</sup> and the Green Paper "Partnership for a new organisation of work"<sup>6</sup>.

19. Thirdly, the Agreement constitutes a remarkable achievement for the sectoral social dialogue at Community level, confirms the crucial role of the European social partners in supplementing, completing and adapting at Community level national standards on working conditions and underlines the vitality of the Agreement on Social Policy recently incorporated in the Amsterdam Treaty.
20. The Commission believes that all the conditions are fulfilled for forwarding a proposal designed to implement this Agreement by way of a Council Decision.

### **THE COMMISSION'S PROPOSAL**

21. In its Communication of 14 December 1993, the Commission stated that "implementing an agreement concluded at Community level by means of a Council decision on a proposal from the Commission at the joint request of the social partners would give the Council no opportunity to amend the agreement. For this reason, the Commission will merely propose, following examination of the agreement between the social partners, the adoption of a decision on the agreement as concluded". In the present case, the proposed instrument is a Directive. It therefore contains the standard clauses relating to the implementation of the Directive at national level.
22. The Commission also took the view that "the Council decision must be limited to making binding provisions of the agreement concluded between the social partners, so the text of the agreement would not form part of the decision but would be annexed thereto".
23. Finally, the Commission announced that "if the Council decides, in accordance with the procedure set out in the last subparagraph of Article 4(2), not to implement the agreement as concluded by the social partners, the Commission will withdraw its proposal for a decision and will examine, in the light of the work done, whether a legislation instrument in the area in question would be appropriate".
24. Hence, the Commission has not incorporated the text of the agreement in its proposal but simply annexed it thereto. Moreover, it reiterates that, if the Council amends the agreement concluded between the social partners, it will withdraw its proposal.

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<sup>4</sup> COM(97) 334 final

<sup>5</sup> COM(95) 302 final

<sup>6</sup> COM(97) 128 final

## ***I. LEGAL BASIS***

25. Article 4(2) of the Agreement on social policy provides that “agreements concluded at Community level shall be implemented, in matters covered by Article 2, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission”. The agreement on the organisation of working time of seafarers relates to the health and safety environment, which come under Article 2(1) of the Agreement on social policy. This is one of the areas where the Council may act by a qualified majority. As a result, Article 4(2) is the proper legal basis for the Commission’s proposal.
26. That Article does not provide for consultation of the European Parliament on requests addressed to the Commission by the social partners. However, in accordance with the undertaking in its Communication, the Commission has kept Parliament informed about the various phases of consultation of the social partners. It is also forwarding this proposal to Parliament so that it can deliver its opinion to the Commission and the Council if it so wishes. The same applies to the Economic and Social Committee.

## ***II. THE FORM THE INSTRUMENT IS TO TAKE***

27. The term “decision” within the meaning of Article 4(2) of the Agreement on social policy refers to one of the binding legislative instruments under Article 189 of the Treaty. It is up to the Commission to propose to the Council the most appropriate of the three binding instruments under the said Article (regulation, directive or decision). In this case, given the nature and the content of the social partners’ document, it is clear that the agreement is intended to be applied indirectly by means of provisions to be transposed into national law by the Member States and/or the social partners. Hence, in that case, the most suitable instrument for its application is a Council Directive. Moreover, in accordance with the undertakings it has given, the Commission considers that the text of the agreement should not be part of the directive but should be annexed thereto.
28. The Commission’s comments on the Articles in its proposal are given below.

### *Article 1*

29. This article confines itself to making the agreement between the social partners obligatory in order to enable it to be put into effect by a Council decision under Article 4(2) of the Agreement on social policy.

### *Articles 2 – 4*

30. Article 2(1) says that the provisions of the Directive prescribe only minimum requirements, giving Member States the chance to adopt stricter measures in the relevant field.
31. Article 2(2) is a “non-regression” standard clause that affects Member States which have, at the time of adoption of the Directive, a higher level of protection than that guaranteed by the agreement. What this clause means is that there should be no lowering of the general level of protection for workers when the Community Directive is adopted. However, it offers Member States the possibility of adopting different measures as required by their economic and social policies, subject to observance of the minimum requirements prescribed by the agreement. It is at any rate clear that the Member States’ room for manoeuvre covers only a level of protection exceeding that guaranteed by the Directive.
32. Article 3 obliges Member States to provide penalties which are effective, commensurate with the infringement and constitute a sufficient deterrent. In applying Community law, it is necessary, as in every legal system, on the one hand that those bearing obligations resulting from this law are dissuaded from infringing it and, on the other, that those who do not respect Community law are duly penalised.
33. Articles 4 and 5 contain the usual provisions for transposition into the national law of the Member States.

### **JUSTIFICATION FOR THE DIRECTIVE IN RESPECT OF SUBSIDIARITY**

34. The proposal for a Council Directive concerning the agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) complies with the principle of subsidiarity as regards its two criteria, namely necessity and proportionality, as laid down in Article 3(b) of the Maastricht Treaty.
35. The first criterion, namely, the need to undertake Community action, is justified by the fact that the social partners, under the procedure provided for in Article 3 of the Agreement on social policy, have agreed that it is necessary to undertake action at

Community level and have requested the implementation of their Community-level agreement through a Council decision based on a proposal from the Commission, pursuant to Article 4(2) of the Agreement on social policy.

36. The Council Directive corresponds to the requirement of proportionality in so far as it only defines the major objectives to be attained by Member States, while allowing the social partners and not the Community to decide on the content.

## **CONCLUSION**

37. The Council is requested to adopt the proposal for a Council Directive concerning the agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).
38. As this proposal is based on the Agreement on Social Policy, it does not, therefore, apply to the United Kingdom (unless it is adopted under Article 139 of the Amsterdam Treaty, after its coming into force). The Commission will, therefore, submit to the Council at the appropriate time, a proposal for a Council Directive to extend this Directive to the United Kingdom.

**Proposal for a COUNCIL DIRECTIVE concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)**

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Agreement on social policy annexed to the Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community, and in particular Article 4(2) thereof,

Having regard to the proposal from the Commission,

(1) Whereas on the basis of the Protocol on Social Policy annexed to the Treaty establishing the European Community, the Member States, with the exception of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as 'the Member States'), wishing to continue along the path laid down in the 1989 Social Charter, have concluded an agreement on social policy;

(2) Whereas management and labour (the social partners) may, in accordance with Article 4(2) of the Agreement on social policy, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;

(3) Whereas the Council adopted Directive 93/104/EC on certain aspects of the organization of working time; whereas sea transport was one of the sectors of activity excluded from the scope of that Directive;

(4) Whereas account should be taken of the relevant Conventions of the International Labour Organization with regard to the organization of working time, including in particular those relating to the hours of work of seafarers;

(5) Whereas the Commission, in accordance with Article 3(2) of the Agreement on social policy, has consulted management and labour on the possible direction of Community action with regard to the sectors and activities excluded from the Working Time Directive

(6) Whereas the Commission, considering after such consultation that Community action was desirable, once again consulted management and labour at Community level on the substance of the envisaged proposal in accordance with Article 3(3) of the said Agreement;

(7) Whereas the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) have informed the Commission of their desire to enter into negotiations in accordance with Article 4 of the Agreement on social policy;

(8) Whereas the said organizations concluded, on 30 September 1998, an Agreement on the working time of seafarers; whereas this Agreement contains a joint request to the Commission to implement the Agreement by a Council decision on a proposal from the Commission, in accordance with Article 4(2) of the Agreement on social policy;

(9) Whereas the Council, in its Resolution of 6 December 1994 on prospects for a European Union social policy: contribution to economic and social convergence in the Union (4), asked management and labour to make use of the opportunities for concluding agreements, since they are close to social reality and to social problems;

(10) Whereas the Agreement applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member State and is ordinarily engaged in commercial maritime operations;

(11) Whereas the proper instrument for implementing the Agreement is a Directive within the meaning of Article 189 of the Treaty; whereas it therefore binds the Member States as to the result to be achieved, whilst leaving national authorities the choice of form and methods;

(12) Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3(b) of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive does not go beyond what is necessary for the attainment of those objectives;

(13) Whereas, with regard to terms used in the Agreement which are not specifically defined therein, this Directive leaves Member States free to define those terms in accordance with national law and practice, as is the case for other social policy Directives using similar terms, providing that the said definitions respect the content of the Agreement;

(14) Whereas the Commission has drafted its proposal for a Directive, in accordance with its Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement;

(15) Whereas the Commission has drafted its proposal for a Directive in compliance with Article 2(2) of the Agreement on social policy which provides that Directives in the social policy domain "shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings";

(16) Whereas the Commission, in accordance with its Communication of 14 December 1993 concerning the application of the Protocol (No 14) on social policy, informed the

European Parliament by sending it the text of its proposal for a Directive containing the Agreement;

(17) Whereas the Commission also informed the Economic and Social Committee;

(18) Whereas the Agreement establishes minimum standards; whereas Member States and/or the social partners may maintain or introduce more favourable provisions;

(19) Whereas implementation of this Directive may not serve to justify any regression in relation to the situation which already exists in each Member State;

(20) Whereas the Member States may entrust the social partners, at their joint request, with the implementation of this Directive, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;

(21) Whereas the implementation of the Agreement contributes to achieving the objectives under Article 1 of the Agreement on Social Policy;

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

The purpose of this Directive is to put into effect the annexed Agreement on the organisation of working time of seafarers concluded on 30 September 1998 between the organisations representing management and labour in the maritime sector (ECSA and FST).

#### Article 2

##### **Minimum requirements**

1. Member States may maintain or introduce more favourable provisions than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are adhered to.

### Article 3

#### **Penalties**

Member States shall determine the range of penalties applicable for infringements of national provisions made in implementation of this Directive and shall take all necessary steps to ensure that they are enforced. The penalties must be effective, commensurate with the infringement, and must constitute a sufficient deterrent. Member States shall notify these provisions to the Commission by the date mentioned in Article 4 at the latest, and any subsequent amendment thereto in good time.

### Article 4

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2001, or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measure to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt the provisions referred to in the first paragraph, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

### Article 5

#### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

## Annex

### EUROPEAN AGREEMENT ON THE ORGANISATION OF WORKING TIME OF SEAFARERS

Having regard to the Agreement on social policy annexed to the Protocol on social policy attached to the Treaty establishing the European Community and in particular Articles 3.4 and 4.2 thereof;

Whereas Article 4.2 of the Agreement on social policy provides that agreements concluded at European level may be implemented at the joint request of the signatory parties by a Council decision on a proposal from the Commission;

Whereas the signatory parties hereby make such a request;

The signatory parties have agreed the following:

#### Clause 1

1. The Agreement applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member State and is ordinarily engaged in commercial maritime operations. For the purpose of this Agreement a ship that is on the register of two States is deemed to be registered in the territory of the State whose flag it flies.
2. In the event of doubt as to whether or not any ships are to be regarded as seagoing ships or engaged in commercial maritime operations for the purpose of the Agreement, the question shall be determined by the competent authority of the Member State. The organisations of shipowners and seafarers concerned should be consulted.

#### Clause 2

For the purpose of the Agreement :

- (a) the term "hours of work" means time during which a seafarer is required to do work on account of the ship;
- (b) the term "hours of rest" means time outside hours of work; this term does not include short breaks;

- (c) the term "seafarer" means any person who is employed or engaged in any capacity on board a seagoing ship to which the Agreement applies;
- (d) the term "shipowner" means the owner of the ship or any other organisation or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the attendant duties and responsibilities.

### Clause 3

Within the limits set out in Clause 5, there shall be fixed either a maximum number of hours of work which shall not be exceeded in a given period of time, or a minimum number of hours of rest which shall be provided in a given period of time.

### Clause 4

Without prejudice to Clause 5, the normal working hours' standard of seafarers is, in principle, based on an eight-hour day with one day of rest per week and rest on public holidays. Member States may have procedures to authorise or register a collective agreement which determines seafarers' normal working hours on a basis no less favourable than this standard.

### Clause 5

1. The limits on hours of work or rest shall be either:
  - (a) maximum hours of work which shall not exceed
    - (i) 14 hours in any 24-hour period; and
    - (ii) 72 hours in any seven-day period;
  - or
  - (b) minimum hours of rest which shall not be less than:
    - (i) 10 hours in any 24-hour period; and
    - (ii) 77 hours in any seven-day period.
2. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length and the interval between consecutive periods of rest shall not exceed 14 hours.
3. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments shall be conducted in a manner that minimises the disturbance of rest periods and does not induce fatigue.

4. In respect of situations when a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.
5. With regard to paragraphs 3 and 4, where no collective agreement or arbitration award exists or if the competent authority determines that the provisions in the agreement or award are inadequate, it would be for the competent authority to determine such provisions to ensure that the seafarers concerned have sufficient rest.
6. With due regard for the general principles of the protection of the health and safety of workers, Member States may have national laws, regulations or a procedure for the competent authority to authorise or register collective agreements permitting exceptions to the limits set out in paragraphs 1 and 2. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods, or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ship on short voyages.
7. A table shall be posted, in an easily accessible place, with the shipboard working arrangements, which shall contain for every position at least:
  - (a) the schedule of service at sea and service in port; and
  - (b) the maximum hours of work or the minimum hours of rest required by the laws, regulations or collective agreements in force in the Member States.
8. The table referred to in paragraph 7 shall be established in a standardised format in the working language or languages of the ship and in English.

#### Clause 6

No seafarer under 18 years of age shall work at night. For the purpose of this Clause, 'night' means a period of at least nine consecutive hours, including the interval from midnight to five a.m. This provision need not be applied when the effective training of young seafarers between the ages of 16 and 18 in accordance with established programmes and schedules would be impaired.

#### Clause 7

1. The master of a ship shall have the right to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.
2. In accordance with paragraph 1, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

3. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

#### Clause 8

1. Records of seafarers' daily hours of work or of their daily hours of rest shall be maintained to allow monitoring of compliance with the provisions set out in Clause 5. The seafarer shall receive a copy of the records pertaining to him or her which shall be endorsed by the master, or a person authorised by the master, and by the seafarer.
2. Procedures shall be determined for keeping such records on board, including the intervals at which the information shall be recorded. The format of the records of the seafarers' hours of work or of their hours of rest shall be established taking into account any available international guidelines. The format shall be established in the language or languages provided by Clause 5, paragraph 8.
3. A copy of the relevant provisions of the national legislation pertaining to this Agreement and the relevant collective agreements shall be kept on board and be easily accessible to the crew.

#### Clause 9

The records referred to in Clause 8, shall be examined and endorsed at appropriate intervals, to monitor compliance with the provisions governing hours of work or hours of rest that give effect to this Agreement.

#### Clause 10

1. When determining, approving or revising manning levels, it is necessary to take into account the need to avoid or minimise, as far as practicable, excessive hours of work, to ensure sufficient rest and to limit fatigue.
2. If the records or other evidence indicate infringement of provisions governing hours of work or hours of rest, measures, including if necessary the revision of the manning of the ship, shall be taken so as to avoid future infringements.
3. All ships to which this Agreement applies shall be sufficiently, safely and efficiently manned, in accordance with the minimum safe manning document or an equivalent issued by the competent authority.

#### Clause 11

No person under 16 years of age shall work on a ship.

#### Clause 12

The shipowner shall provide the master with the necessary resources for the purpose of compliance with obligations under this Agreement, including those relating to the appropriate manning of the ship. The master shall take all necessary steps to ensure that the requirements on seafarers' hours of work and rest arising from this Agreement are complied with.

#### Clause 13

- 1 All seafarers shall possess a certificate attesting to their fitness for the work for which they are to be employed at sea.

The nature of the health assessment to be made and the particulars to be included in the medical certificate shall be established after consultation with the shipowners and seafarers organisations concerned.

All seafarers shall have regular health assessments. Watchkeepers suffering from health problems certified by a medical practitioner as being due to the fact that they perform night work shall be transferred, wherever possible, to day work to which they are suited.

2. The health assessment referred to in paragraph 1 shall be free and comply with medical confidentiality. Such health assessments may be conducted within the national health system.

#### Clause 14

Shipowners shall provide information on watchkeepers and other night workers to the national competent authority if they so request.

#### Clause 15

Seafarers shall have safety and health protection appropriate to the nature of their work. Equivalent protection and prevention services or facilities with regard to the safety and health of seafarers working by day or by night shall be available.

#### Clause 16

Every seafarer shall be entitled to paid annual leave of at least four weeks, or a proportion thereof for periods of employment of less than one year, in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and or/practice.

The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

Brussels, 30 September 1998

**Federation of Transport Workers' Unions in the European Union (FST)**

**European Community Shipowners' Association (ECSA)**

**PROPOSAL FOR  
A COUNCIL DIRECTIVE CONCERNING THE  
ENFORCEMENT OF SEAFARERS' HOURS OF WORK  
ON BOARD SHIPS USING COMMUNITY PORTS**

**PROPOSAL FOR A COUNCIL DIRECTIVE  
CONCERNING THE ENFORCEMENT OF SEAFARERS' HOURS OF WORK  
ON BOARD SHIPS USING COMMUNITY PORTS**

**EXPLANATORY MEMORANDUM**

**GENERAL INTRODUCTION**

1. At the request of the social partners, following the conclusion on 30 September 1998 of their Agreement on the organisation of working time in the maritime sector, the Commission is proposing a Council Directive to implement this Agreement in the Community, referred to as the Maritime Working Time Directive (MWT Directive).

The Agreement concluded between the social partners substantially reflects the provisions of the ILO Convention n° 180. The MWT Directive allows Member States to introduce or maintain more favourable provisions than established in the Agreement. (Article 2 of the MWT Directive and provisions relating in particular to health of seafarers and annual leave, which are additional to ILO Convention n° 180 (clauses 13 to 16 of the Agreement)).

The Agreement and consequently the MWT Directive address the Member States in their capacity as flag States.

2. The primary reasons for adopting a working time regime specifically for the maritime sector relate to the unique nature of the working environment. The regime applicable on board ships is quite different from conditions generally applicable in most land-based activities. Shipping does not operate on a single territory, under the jurisdiction of one State, but within the framework of international law, where freedom of navigation is a predominant concept.
3. An important consideration is that the respect of working hours is a significant element of the safety policy. In addition competition aspects cannot be ignored. Fair and non-distorted competition, in the safest possible environment, is necessary not only between shipowners but also on all routes to and from Community ports where Member States' flags operate in direct competition with each other and with vessels registered under third country flags.

The need for placing all operators on an equal footing, as a matter of principle has been stressed by the Council in its Resolution on a Common Policy on Safe Seas. It is also an essential element of ILO Convention 147. To this end, Article 4 of ILO Convention n° 147, as referred to in the 1996 Protocol to the Convention, establishes

a degree of control by the port State allowing States to take relevant measures necessary to ensure compliance with internationally agreed standards.

Member States are parties to the relevant ILO Conventions will be entitled to apply Article 4 of ILO Convention to all ships plying to their ports. Through the “no more favourable treatment clause”, Member States should also extend this control to ships flying the flag of third States which are not parties to the Conventions.

4. Ensuring a level playing field requires a coherent verification regime. However, the verification of rules applicable to hours of work or hours of rest on board ships is a complex matter. Verification of compliance with the hours of work during a ship’s voyage in areas beyond national jurisdiction is difficult to establish. Since most of the work or rest hours on board a ship are completed when the ship is at sea this verification raises specific difficulties.

Fortunately some specific provisions to facilitate verification of the working time have been included in the requirements of ILO Convention n° 180. These provisions, together with the guidance provided at IMO/ILO level, should therefore form the corner stone of a coherent system to ensure compliance with the maritime working time regime.

5. The specificity of the provisions of ILO Conventions entering into force is another element that cannot be ignored. ILO Conventions normally require significantly fewer ratifications by States to enter into force, than Conventions adopted within the framework of the International Maritime Organization. There is a risk that even though ILO Convention n° 180 and ILO Convention n° 147 would be largely ratified by Member States, a number of ships calling at ports of Member States may fly the flag or be registered in the territory of a State which is not a party to one of these Conventions. Therefore it is essential to provide the necessary clarification within a “no more favourable treatment clause”, allowing verification that the ship is of an acceptable standard with respect to seafarers’ hours of work and hours of rest.
6. Following on from these characteristics and concerns Member States, in their capacity of port States, must be provided with a suitable mechanism for the verification of the maritime working time requirements and to identify unequivocally the common international standards which shall be applied to all ships.

In addition, in accordance with the subsidiarity principle, the system should not interfere with such responsibilities as :

- The choice of the most appropriate inspection authority
- The frequency of the inspections
- The reliance upon the professional judgement of the inspector,

which can efficiently be exercised by the Member States and do not affect the achievement of the main objectives of the ILO Convention N° 180.

7. The Commission recognises that the application of the maritime working time directive to seafarers, whatever their nationality, working on board vessels flying the flag of a Member State raises no difficulty. It is, in principle, not dependent upon the entry into force of the ILO Convention and could therefore be implemented within a relatively short time-frame.

However, in order to ensure a comparable level of safety and protection of the health of seafarers on board all ships, the Commission proposes to complement the MWT Directive with a Directive concerning the enforcement of seafarers' hours of work on board ships calling at community ports, hereafter referred to as the Enforcement Directive.

## MAIN PRINCIPLES OF THE LEGISLATION

8. Through the Enforcement Directive, Member States acting as flag states will have to set up mechanisms for ensuring compliance by any seagoing vessel registered in the territory of a Member State with the provisions of the MWT Directive.

However Member States, when acting as port States, should not require compliance of third country vessels with provisions which are embodied in the Agreement but do not appear in Convention ILO N° 180. Such provisions include those relating to health of seafarers and annual leave (clauses 13 to 16 of the Agreement). It is also not feasible for the Member States to impose under this directive to third country vessels more favourable provisions than established in the Agreement, which they were allowed to introduce or maintain under Article 2 of the MWT Directive. Thus enforcement of requirements which go beyond those contained in Convention ILO N° 180, should not be required from vessels not registered in the territory or not flying the flag of a Member State.

In addition such third country vessels should only comply with the requirements of the Enforcement Directive after the date of entering into force of ILO Convention N° 180 and the Protocol to ILO Convention N° 147.

9. The Enforcement Directive describes the procedures to be followed for the verification of compliance with the relevant provisions of MWT Directive, when ships call at a port of a Member State of the Community.

Underlining that ILO Convention N° 180 requires that:

- a table is elaborated, including a description of the shipboard working arrangements and the maximum hours of work and the minimum hours of rest required by the legislation in force in the flag State, which, shall be posted in an easily accessible place;

- records of seafarers' daily hours of work or of daily hours of rest shall be maintained, kept on board, and regularly endorsed by the competent authority of the State in which the ship is registered, and

noting that a joint ILO-IMO group of experts has developed a standardised model format of a table of the shipboard working arrangements, as well as a standardised model format of records of seafarers' daily hours of work or of daily hours of rest, Member States, as flag States or port States, have at their disposal appropriate tools for monitoring compliance with the provisions of the ILO Convention n° 180 as reflected in the MWT Directive.

In order to ensure a coherent use of these tools due account of these standardise forms has been taken within the Enforcement Directive. The Enforcement Directive foresees either the use of this standardised form or of an equivalent format.

Since evidence of non-compliance with the relevant provisions of the MWT Directive would normally result from an investigation carried out on board the ship, the Enforcement Directive also lists the minimum items which should be verified in relation with these forms.

In addition, the presence on board of seafarers excessively fatigued, where it can be established that this fatigue results from excessive working hours or insufficient rest hours, may be considered by the inspectors as supporting evidence that the relevant requirements of MWT Directive are met.

10. The Enforcement Directive describes measures to be taken when such evidence of non-compliance has been established. Such measures may include a prohibition to leave port until, for instance, inaccuracies in documentation are rectified or until seafarers are duly rested. In the latter case, the inconvenience caused to the vessel might be a delay of a few hours only.
11. The Enforcement Directive also provides measures to ensure appropriate information of the interested parties of the results of the inspection.
12. Since different administrations may be entrusted the task to verify compliance with the regime of hours of work or hours of rest laid down under the MWT, the Enforcement Directive requires Member States to take measures in order to ensure that the relevant information related to inspection or prohibition to leave a port are appropriately communicated to other administrations possibly involved in that State as well as in other Member States.

## SPECIAL CONSIDERATIONS

### Article 1

This Article defines the purpose of the Directive: to provide a mechanism for the verification and enforcement of compliance by ships of all flags calling at ports of Member States with the Maritime Working Time Directive (MWT Directive).

The second paragraph clarifies under which conditions the provisions of the MWT Directive are applicable to ships flying a third country flag.

### Article 2

This Article contains the definitions of the key words of the Directive.

### Article 3

This Article reflects the provisions of Article 4 of the ILO Convention n° 147 describing the measures available to Member States for verifying conformity with the standards laid down by the Convention.

Such verification may follow a complaint received by the State or an inspection of the vessel. The follow-up measures include the need to inform the government of the country in which the ship is registered as well as any measures necessary to rectify conditions (in relation with hours of work and hours of rest) which are clearly hazardous to safety or health of seafarers on board.

### Article 4

This Article provides an indication of the minimum verification to be carried out in order to establish that a ship does not conform to the standards laid down in ILO Convention n° 180.

The inspection carried out to this end shall include a verification of the documents related to the hours of work and hours of rest applicable on board the ship, i.e:

- the table of shipboard working arrangements, which shall be established in the working language or languages of the ship and in English, according to the model format reproduced in Annex I to the Directive, or in an equivalent format, and shall be posted on board in an easily accessible place.

- the records of seafarers' hours of work or hours of rest which shall be established in the working language or languages of the ship and in English according to the model format reproduced in Annex II to the directive, or in an equivalent format, and shall be kept on board and be endorsed by the competent authority of the State where the ship is registered at appropriate intervals.

In addition, evidence of non-compliance may result from the inspectors authorised by the competent authority observing that seafarers on board are excessively fatigued as a result of the working conditions, and more particularly of excessive working hours of work or insufficient hours of rest.

### Article 5

This Article lays down the necessary measures to be taken by Member States when, following a complaint or receiving evidence that a ship does not comply with the standards of ILO Convention n° 180, it is shown that conditions on board are clearly hazardous to safety or health of the seafarers and need to be rectified. Such measures are left to the discretion of the competent authority of the Member State involved. Depending on the nature and seriousness of deficiencies found, the vessel may have to be prohibited from leaving port until the deficiencies found are rectified.

Various measures may have to be taken by the master of the vessel or the flag state administration in order to rectify such deficiencies. These may include the establishment of a table of shipboard working arrangements in compliance with the provisions of ILO Convention n° 180, the adaptation of manning arrangements on board to avoid excessive working periods for certain members of the crew, or enabling to the relevant members of the crew to adequately rest before the ship proceeds to sea.

### Article 6

This Article describes the measures to be taken by a Member State which decides to prohibit a ship from proceeding to sea, for the reasons described in Article 3 or 4, in order to appropriately inform the competent authorities of the state in which the ship is registered. It also stresses that the verification carried out under the provisions of this Directive shall not lead to undue delay for a ship.

### Article 7

This Article describes the conditions applicable to the right of appeal against a detention decision concerning a vessel in a port.

## Article 8

This Article requires co-operation between Member States and their competent authorities, to ensure that the Directive is applied effectively.

## Article 9

This provision ensures that ships flying the flag of a State which has not ratified one of the relevant ILO Conventions does not receive a more favourable treatment than a ship flying the flag of a State which has done so. Indeed, the fact that a ship flies the flag of a State which has not ratified the relevant ILO Convention can be considered as an indicator that the working conditions on board, and particularly that the regime of hours of work might not be satisfactory nor provide a comparable level of safety or health conditions as required under ILO Convention n° 180.

## Articles 10 and 11

These Articles uphold the measures which each Member State has to comply with in order to enforce this Directive.

The Directive mentions a general date by which Member States shall bring into force the relevant legislation for the application of the Directive. This date, the 30 June 2001, takes into account the expected timetable for the adoption and entry into force of Directive../EC. Thus the dates of application of these instruments should coincide.

Two exceptions have been made to the general implementation date:

- vessels not registered in the territory of a Member State, to which the relevant provisions of Directive../EC should only be enforced after the entry into force of the ILO Convention n° 180;
- the United Kingdom not being a party to the protocol (N° 14) on Social Policy, a specific Directive would be necessary in order to extend the provisions of Directive ../EC to the United Kingdom. The application of the latter Directive to the United Kingdom depends on the date of application of the specific Directive concerning the application of the agreement in the United Kingdom.

## Articles 12 and 13

No comments

## Annexes

The Annexes include the format models for the shipboard working arrangements (Annex I) as well as the records of seafarers' hours of work or hours of rest (Annex II) as developed by a joint group of experts of the International Labour Organisation and the International Maritime Organization.

**PROPOSAL FOR A COUNCIL DIRECTIVE  
CONCERNING THE ENFORCEMENT OF SEAFARERS' HOURS OF WORK  
ON BOARD SHIPS USING COMMUNITY PORTS**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission<sup>7</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>8</sup>,

Acting in accordance with the procedure laid down in Article 189c of the Treaty<sup>9</sup>,

1. Whereas Community action in the field of social policy aims, inter alia, at improving the health and safety of workers in their working environment;
2. Whereas Community action in the field of maritime transport aims, inter alia, at improving shipboard living and working conditions of seafarers, safety at sea and the prevention of pollution caused by maritime accidents;
3. Whereas the International Labour Organisation Conference adopted during its eighty-fourth session of 8-22 October 1996 the Convention concerning Seafarer's Hours of Work and the Manning of Ships, 1996 (ILO N° 180) and the Protocol to the Merchant Shipping (Minimum Standards) Convention, 1976;
4. Whereas Council Directive [.././EC of .. ... 199.], hereinafter called MWT Directive, adopted under Article 4.2 of the Agreement on Social Policy aims to put into effect the European Agreement on the organisation of Working Time of Seafarers concluded on the 30<sup>th</sup> September 1998 between the social partners, hereinafter named "the Agreement"; whereas the content of the Agreement reflects certain provisions of ILO Convention n° 180 concerning Seafarer's Hours of Work and the Manning of Ships; whereas this Agreement applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any member state and is ordinarily engaged in commercial maritime operations;

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<sup>7</sup> OJ No C --, --- 199-, p.-

<sup>8</sup> OJ No C --, --- 199-, p.-

<sup>9</sup> Opinion of the European Parliament of ---- 199- (OJ No C --, ----199-, p.-), Council common position of ----199- (OJ No C --, ----199-, p.-) and Decision of the European Parliament of ----199- (not yet published in the official Journal).

5. Whereas the purpose of this Directive is to apply the provisions of the MWT Directive which reflect the provisions of ILO Convention n° 180 to any ship calling at a port of a Member State, irrespective of the flag it flies; whereas however the MWT Directive includes requirements which are not to be found in the ILO Convention n° 180 and should not therefore be enforced on board ships not flying the flag of a Member State;
6. Whereas the MWT Directive applies to seafarers on board every seagoing ship registered in the territory of a Member State; whereas Member States should monitor compliance with the provisions of this Directive by ships registered in their territory;
7. Whereas, in order to protect safety and to avoid distortions of competition, Member States should be allowed to verify compliance with the relevant provisions of the MWT Directive by all sea-going vessels calling at their ports, irrespective of the State in which they are registered;
8. Whereas, in particular, ships flying the flag of a State which is not a party to ILO Convention n° 180 or the Protocol to Convention ILO n° 147 should not receive a more favourable treatment than those flying the flag of a State which is a Party to these or one of these Conventions;
9. Whereas, for the control of the effective application and enforcement of the MWT Directive, it is necessary that Member States carry out inspections on board ships, notably after having received a complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution;
10. Whereas for the purpose of this Directive Member States, on their own initiative, may designate, as appropriate, Port State Control inspectors to carry out inspections on board vessels calling to Community Ports.
11. Whereas the evidence that a ship does not comply with the requirements of the MWT Directive may be obtained after verification of the shipboard working arrangements and seafarers' records of hours of work or hours of rest, or when the inspector has a reasonable belief that seafarers are excessively fatigued.
- 12. Whereas, in order to rectify any conditions on board a ship which are clearly hazardous to safety or health, the competent authority of the Member State in whose port the ship has called may impose a prohibition to leave the port until the deficiencies found have been rectified or the crew is sufficiently rested.**
13. Whereas, since the MWT Directive reflects the provisions of the ILO Convention N° 180, verification of compliance by ships registered in the territory of a third State with the provisions of that Directive could only take place once this Convention has entered into force;

14. Whereas, since the Agreement on Social Policy does not apply to the United Kingdom, the MWT Directive is not legally binding on that Member State, whereas however, Directive ..../EC of .. .. 199. has extended the provisions of the Directive implementing the European Agreement to the United Kingdom;

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

##### Purpose and scope

1. The purpose of this Directive is to provide a mechanism for the verification and enforcement of compliance by ships calling at ports of Member States with the MWT Directive in order to improve maritime safety, working conditions and the health and safety of seafarers on board ships.
2. For the purposes of this Directive, the provisions of the MWT Directive are applicable to ships registered in a Member State and to ships not registered in the territory of or not flying the flag of a Member State, with the exception, for the latter, of :
  - the requirements maintained or introduced by the Member States which are more favourable than those laid down in ILO Convention N° 180,
  - Clauses 13 to 16 of the European Agreement attached to the MWT Directive.

#### Article 2

##### Definitions

For the purposes of this Directive,

- a) “ship” means any seagoing vessel registered in a Member State in accordance with the MWT Directive, as well as any seagoing vessel to which the ILO Convention n° 180 applies, flying a flag other than that of the port State,
- b) “competent authority” means the competent authorities designated by the Member States to perform functions under this Directive,
- c) “inspector” means a public-sector employee or other person, duly authorised by the competent authority of a Member State to inspect the working conditions on board, and responsible to that competent authority,
- d) “complaint” means information submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew.

## Article 3

### Enforcement

Without prejudice to Article 1, Paragraph 2, if a Member State in whose port a ship calls voluntarily in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards referred to in the MWT Directive, it shall prepare a report addressed to the government of the country in which the ship is registered and shall take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health of seafarers.

## Article 4

### Means to obtain evidence of non-compliance

In determining whether there is evidence that a ship does not conform to the standards laid down in the MWT Directive, as referred to in Article 3, the Member State in whose port the ship calls shall conduct an investigation on board whether :

- a table with the shipboard working arrangements has been established in the working language or languages of the ship and in English according to the model format reproduced in Annex I, or in an alternative equivalent format, and is posted on board in an easily accessible place.
- seafarers' records of hours of work or hours of rest have been established in the working language or languages of the ship and in English according to the model format reproduced in Annex II, or in an alternative equivalent format, and are kept on board and have been endorsed at appropriate intervals by the competent authority of the State where the ship is registered.

When there are indications that seafarers on board a ship calling at a port of a Member State are unduly fatigued, as a result of excessive working hours or insufficient hours of rest, the inspector may decide, using his professional judgement, that the ship does not substantially conform to the requirements of the MWT Directive .

## Article 5

### Rectification of deficiencies

When, pursuant to Articles 3 and 4, a Member State has received a complaint or obtained evidence that a ship does not conform to the standards referred to in the MWT Directive , it shall take the necessary measures to ensure that any conditions on board which are clearly hazardous to safety or health of seafarers are rectified.

Such measures may include a prohibition to leave the port until deficiencies found have been rectified or the seafarers are sufficiently rested.

## Article 6

### Follow-up procedures

1. In the event that a ship is prohibited to leave the port pursuant to Article 5, the competent authority of the Member State shall inform the master, the owner or operator, the administration of the flag State or the State where the ship is registered or the Consul, or in his absence the nearest diplomatic representative of the State, of the results of the inspections, of any decisions taken by the inspector, and of corrective actions required, if necessary .
2. When carrying out an inspection under this Directive, all possible efforts should be made to avoid a ship being unduly delayed. If a ship is unduly delayed, the owner or operator shall be entitled to compensation for any loss or damage suffered. In any instance of alleged undue delay the burden of the proof shall lie with the owner or operator of the ship.

## Article 7

### Right of appeal

1. The owner or the operator of the ship or his representative in the Member State shall have a right of appeal against a detention decision taken by the competent authority. An appeal shall not cause the detention to be suspended.
2. Member States shall establish and maintain appropriate procedures for this purpose in accordance with their national legislation.
3. The competent authority shall properly inform the master of a ship referred to in paragraph 1 of the right of appeal.

## Article 8

### Administrative co-operation

Member States shall make provisions for co-operation between their relevant authorities and the relevant competent authorities of other Member States to ensure the effective application of this Directive and shall notify the Commission of those provisions. .

## Article 9

### No more favourable treatment clause

When inspecting a ship registered into the territory of or flying the flag of a State which has not ratified the ILO Convention n° 180 or the Protocol to ILO Convention n° 147, Member States shall, once these instruments are in force, ensure that the treatment given to such ships and their crew is no more favourable than that given to a ship registered into the territory of or flying the flag of a State which is a Party to these or one of these Conventions.

## Article 10

### Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 2001.
2. By way of derogation to paragraph 1, this Directive shall not apply to the United Kingdom until the implementation date referred to in Directive ..../EC which extends the provisions of the European Agreement to the United Kingdom.
3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.
4. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

## Article 11

### Non Member States vessels

The requirements of this Directive shall apply to vessels not registered in the territory of or not flying the flag of a Member State only three months after the date of entry into force of the Convention concerning Seafarer's Hours of Work and the Manning of Ships, 1996 (ILO N° 180) and of the date of entry into force of the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976.

## Article 12

### Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

## Article 13

### Addressees

This Directive is addressed to the Member States.

Done at,

For the Council  
The President

## **Annex I**

### **Model format for table of shipboard working arrangements**

**Model format for table of shipboard working arrangements<sup>10</sup>**

Name of the ship : \_\_\_\_\_ Flag of the ship : \_\_\_\_\_ IMO number (if any) : \_\_\_\_\_ Latest update of table : \_\_\_\_\_ ( ) of ( ) pages.

The maximum hours of work or minimum hours of rest are applicable in accordance with : \_\_\_\_\_ (national law or regulation) issued in conformity with ILO’s Seafarers’ Hours of Work and the Manning of Ships Convention 1996 (N° 180) and with any applicable collective agreement registered or authorised in accordance with that Convention and with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended, (STCW Convention)<sup>11</sup>

Maximum hours of work or minimum hours of rest<sup>12</sup> \_\_\_\_\_

Other requirements : \_\_\_\_\_

Position/Rank <sup>13</sup>	Scheduled daily work hours at sea		Scheduled daily work hours in port		Comments	Total daily work/rest <sup>12</sup> hours	
	Watchkeeping (from-to)	Non-watchkeeping duties (from-to) <sup>14</sup>	Watchkeeping (from-to)	Non-watchkeeping duties (from-to)		At sea	In ports

Signature of Master \_\_\_\_\_

<sup>10</sup> The terms used in this model table are to appear in the working language or languages of the ship and in English.

<sup>11</sup> See overleaf for selected extracts from ILO Convention 180 and the STCW Convention.

<sup>12</sup> Delete as applicable.

<sup>13</sup> For those positions/rank that are also listed in the ship’s safe manning document, the terminology used should be the same as in that document.

<sup>14</sup> For watchkeeping personnel, the comments section may be used to indicate the anticipated number of hours to be devoted to unscheduled work and any such hours should be included in the appropriate total daily work hours column

## **Selected texts from ILO Convention 180 and the STCW Convention**

### **ILO Convention 180**

- Art5 paragraph 1. The limits on hours of work or rest shall be as follows : (a) maximum hours of work shall not exceed : (I) 14 hours in any 24-hour period ; and (ii) 72 hours in any seven-day period ; or (b) minimum hours of rest shall not be less than : (I) ten hours in any 24-hour period ; and (ii) 77 hours in any seven-day period.
- Art.5 paragraph 2. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.
- Art.5 paragraph 6. Nothing in paragraphs 1 and 2 shall prevent the Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.
- Art.7 paragraph 1 Nothing in this Convention shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.
- Art.7 paragraph 3 As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

### **STCW Convention**

#### Section A-VIII/1 of the STCW Code (Mandatory)

1. All persons who are assigned duty as officer in charge of a watch shall be provided a minimum of 10 hours rest in any 24-hour period.
2. The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length.
3. The requirements for rest periods laid down in paragraph 1 and 2 need not be maintained in the case of an emergency or drill or in other overriding operational conditions.
4. Notwithstanding the provisions of paragraphs 1 and 2, the minimum period of ten hours may be reduced to not less than 6 consecutive hours provided that any such reduction shall not extend beyond two days and not less than 70 hours of rest are provided each seven day period.
5. Administrations shall require that watch schedules be posted where they are easily accessible.

#### Section B-VIII/1 of the STCW Code (Guidance)

3. In applying regulation VIII/1, the following should be taken into account :
  - .1 provisions made to prevent fatigue should ensure that excessive or unreasonable overall working hours are not undertaken. In particular, the minimum rest periods specified in Section A-VIII/1 should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties ;
  - .2 that the frequency and length of leave periods, and the granting of compensatory leave, are material factors in the preventing fatigue from building up over a period time ;
  - .3 the provision may be varied for ships on short-sea voyages, provided special safety arrangements are put in place .

## **Annex II**

**Model format for record of hours of work  
or hours of rest of seafarers**

**Model format for record of hours of work or hours of rest of seafarers<sup>15</sup>**

Name of ship : \_\_\_\_\_ IMO number (if any) : \_\_\_\_\_ Flag of ship : \_\_\_\_\_ Page 1 of 2

Seafarer (full name) : \_\_\_\_\_ Position / rank : \_\_\_\_\_

Month and year : \_\_\_\_\_ Watchkeeper<sup>16</sup> :                      yes                      no

**Record of hours of work/rest<sup>17</sup>**

Please mark periods of work or rest, as applicable, with an « X », or using a continuous line arrow.

**COMPLETE THE TABLE ON THE REVERSE SIDE**

The following national laws, regulations and / or collective agreements governing limitations on working hours or minimum rest periods apply to this ship : \_\_\_\_\_

I agree that this record is an accurate reflection of the hours of work or rest of the seafarer concerned.

Name of master or person authorized by master to sign this record \_\_\_\_\_

Signature of master or authorized person \_\_\_\_\_ Signature of seafarer \_\_\_\_\_

A copy of this record is to be given to the seafarer.  
competent authority).

This form is subject to examination and endorsement under procedures established by the (name of

<sup>15</sup> The terms used in this model table are to appear in the working language or languages of the ship and in English.

<sup>16</sup> Check ✓ as appropriate.

<sup>17</sup> Delete as appropriate.



## **IMPACT OF THE PROPOSALS ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)**

### **Title of proposals**

- 1. Proposal for a Council Directive concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).**
- 2. Proposal for a Council Directive concerning the enforcement of seafarer's hours of work on board ships using Community ports.**

**Document reference number:** 98019

### **The proposals**

#### **I. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?***

1. The purpose of the first proposal for a Directive is to establish minimum standards in respect of the organisation of working time of seafarers by putting into effect the annexed Agreement on this subject concluded on 30 September 1998 between the organisations representing management and labour in the maritime sector (ECSA and FST).
2. The purpose of the second Directive is to apply to all ships calling a port of a Member State the relevant provisions of the first Directive, irrespective of their place of registry or flag.
3. The White Paper on the sectors and activities excluded from the Working Time Directive (COM(97) 334) noted that long working hours at sea is common. However, a systematic approach to limitation of these hours had hitherto been difficult because of competition from ships flying the flags of third countries. For this reason, and because this is a global industry, there had been concern, within the Joint Committee on maritime transport, to reach agreement in the international organisations, before tackling intra-Community issues.
4. In October 1996, the International Labour Organisation (ILO) adopted a new Convention (N° 180) on seafarers' hours of work and the manning of ships. The Convention provides, in respect of seafarers on board ship, either maximum working hours (14 hours a day and 72 hours a week) or minimum rest periods (10 hours a day and 77 hours a week).
5. Also, in October 1996, the ILO adopted a Protocol to the Convention 147 which establishes a degree of control by the Port State allowing States to take relevant measures necessary to ensure compliance with internationally agreed standards.

6. The first proposal is inspired from the provisions of ILO Convention N° 180 and Directive 93/104/EC on certain aspects of the organisation of working time. It will provide Community-wide rules in respect of seafarers on board ships registered in the territory of a Member State.
7. The second proposal for a Directive concerning the enforcement of seafarers' hours of work on board ships using Community ports will provide for the working time rules to be enforced in respect of all ships including ships not registered in a Member State. It is important for competition purposes to ensure that all operators are placed on an equal footing, as stressed by the Council in its Resolution on a Common Policy on Safe seas. To this end, the rules applicable to both Community registered ships and ships registered in third Parties should come into effect in the Member States and internationally at broadly the same time. For that reason alone Community-wide action is justified.
8. The two proposals for Council Directives concerning the agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) and its corresponding enforcement comply with the principle of subsidiarity as regards its two criteria, namely necessity and proportionality, as laid down in Article 3(b) of the Maastricht Treaty.
9. The first criterion, namely, the need to undertake Community action, is justified by the fact that the social partners, under the procedure provided for in Article 3 of the Agreement on social policy, have agreed that it is necessary to undertake action at Community level and have requested the implementation of their Community-level agreement through a Council decision based on a proposal from the Commission, pursuant to Article 4(2) of the Agreement on social policy. They have also expressed the need for the Agreement to be properly enforced through appropriate legislation, in order to prevent distortion of competition in the world maritime context.

### **The impact on undertakings**

#### **II. *Who will be affected by the proposals?***

The proposals will apply to seafarers on board ships registered in the territory of a Member State and to their employers.

#### **III. *What will undertakings have to do to comply with the proposals?***

Businesses will need to ensure that the provisions of the Directive, in particular with regard to annual leave and rest or limits on working time are complied with.

IV. *What economic effects are the proposals likely to have?*

(a) *What will be the impact on*

– Employment and the competitiveness of undertakings

By introducing EU limits at broadly the same time as international limits, the proposals should have a beneficial effect on EU employment levels and the competitiveness of EU shipping companies in that it should limit the possibilities of unfair competition from third countries.

– Capital investment and business start-ups?

Negligible

(b) *Do new administrative procedures need to be put in place?*

Most of the procedures involved would be needed to implement the relevant international Conventions and that would include the appropriate administrative mechanisms to ensure the application of the proposed legislation. For these, there will be a one-off cost of introducing new work rosters. Most ships already have adequate monitoring systems, but some extensions may be needed to be able to prove compliance.

(c) *Cost-benefit in quantitative and qualitative terms*

Because of the existence of the ILO Convention, the impacts of extending the WTD to cover seafarers will only derive from clauses 13-16. Given the pressures on the EU-flagged ship operations to ensure standards are achieved, it is unlikely that these particular clauses will require any additional re-organisation of shift working, deployment or indeed record-keeping than will already be in place because of the requirements implicit or explicit in the ILO Convention. This means that it is unlikely that there will any additional cost for monitoring hours of work for night-workers nor for health and safety protection and assistance because these are already required under the ILO Convention.

Other costs arise from the requirement to have a certificate of fitness to work at sea and the provision of at least four weeks paid annual leave, or from the need to provide the necessary arrangements for ship inspection.

Benefits arise from the reduction in downtime due to accidents and sick leave brought about by better provision for rest periods and a shorter working week. In addition it can be assumed that workers are healthier and therefore more productive as a result of greater rest. The sector is also exposed to additional commercial pressures which place a premium on a well-organised and healthy work-force. Insurance companies are more stringent in their assessment of risks

and lower premiums are available to those operating with higher standards. Higher operational standards, and therefore a better quality of service, are important defensive factors against low cost providers with non-EU flagged ships, especially the growing competition from China. Moreover, the enforcement of the legislation through the proposed provisions on the implementation of the working hours on board any vessels calling at EU ports, will have, as a consequence of the reduction in fatigue for seafarers, a positive influence in the safety conditions in which ships will operate in Community waters.

d) *What will the Directive cost?*

The Commission has arranged for a Business Impact Assessment to be undertaken<sup>18</sup> to assess the potential impact.

The study shows that a precise estimate of the costs and benefits of implementing the Directive is not possible. Any estimate involves making many judgements on the basis of the partial evidence available and is therefore subject to a wide margin of error. However, the best indication of the likely order of magnitude of the overall impact of the proposals is that the net cost (costs *minus* benefits) is of the order of 0.5% of the average annual earnings of the seafarers concerned. The main costs are likely to arise from the provision of four weeks' paid annual leave. The main benefits are likely to arise from a reduction in the number of accidents. The proposals will also result in better safety conditions in EU waters (i.e. positive impacts concerning less loss of life and less maritime pollution).

V. *Do the proposals contain measures to take account of the specific situation of small and medium-sized enterprises (reduced or different requirements, etc.)?*

No. Flexibility is provided for ships of all sizes.

## **Consultation**

VI. *List the organisations which have been consulted about the proposal and outline their main views.*

A wide range of organisations have been consulted. Specifically the Agreement annexed to the first proposal for a Directive has been negotiated between the organisations representing management and labour in the maritime sector (ECSA and FST).

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<sup>18</sup> Business Impact Assessment, Working Time Directive: excluded sectors, Cambridge Policy Consultants, October 1998

## COMMISSION RECOMMENDATION

of 18 November 1998

on

ratification of ILO Convention 180 concerning Seafarers' Hours of Work and the Manning of Ships, and

ratification of the 1996 Protocol to the 1976 Merchant Shipping (Minimum Standards) Convention

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 155, second indent, thereof,

Whereas ILO Convention 180 concerning Seafarers' Hours of Work and the Manning of Ships, adopted at the 84th maritime session of the International Labour Conference of 22 October 1996, prescribes working and resting hours for seamen working on board ships;

Whereas the Convention's aims - promotion of the health and safety of workers, the improvement of maritime safety and the protection of the marine environment - are also objectives of the Community;

Whereas the 1996 Protocol to Convention 147 on Merchant Shipping (Minimum Standards) of 1976, which was adopted at the same time as Convention 180, includes in its additional annex Convention 180 concerning Seafarers' Hours of Work and the Manning of Ships of 1996;

Whereas Article 4 of the Merchant Shipping (Minimum Standards) Convention to which the 1996 Protocol refers back stipulates that a country that has ratified the Convention may inspect a ship calling in at one of its ports so as to verify that the living, working and safety conditions of the crew conform with the provisions of the Conventions annexed to the Merchant Shipping Convention;

Whereas the Commission has just submitted to the Council a proposal for a Directive, adopted under the Social Protocol, on the European agreement on the organisation of working time of seafarers, which is based on Convention 180;

Whereas this proposal only covers seamen working on ships flying Member State flags;

Whereas the provisions on the working time of seafarers can only be applied and enforced in the Community in respect of ships flying third country flags if Convention 180 takes effect and if the 1996 Protocol to the 1976 Merchant Shipping (Minimum Standards) Convention is ratified by the Member States of the Community;

Whereas the entry into force of Convention 180 and of the 1996 Protocol to the 1976 Merchant Shipping (Minimum Standards) Convention will enable the Member States which have ratified Convention 180 and the 1996 Protocol to monitor, on the basis of a Council Directive, the application of Convention 180's working time rules on all ships calling in at Community ports;

Whereas compliance with Convention No. 180 will help improve maritime safety in the EU and put ships flying Member State flags on an equal footing with those flying the flags of the various third countries;

Whereas it is desirable that Directive .../.../EC on the application of the working hours of seamen on board ships calling in at Community ports should enter into force at the same time as the Directive on implementation of the European agreement on the organisation of working time of seafarers and, to this end, it is important that the Member States ratify Convention 180 and the 1996 Protocol and deposit the instruments of ratification with the International Labour Office as soon as possible,

HEREBY RECOMMENDS:

1. that the Member States which have not yet done so be requested to ratify ILO Convention 180 concerning Seafarers' Hours of Work and the Manning of Ships, adopted on 20 October 1996;
2. that the Member States which have not yet done so be requested to ratify the 1996 Protocol to Convention 147 on Merchant Shipping (Minimum Standards) of 1976;
3. that the Member States be requested to inform the Commission within one year of publication of this Recommendation of the measures taken to implement it.

Done at Brussels,

For the Commission

Padraig Flynn  
Member of the Commission