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**COMMISSION STAFF WORKING DOCUMENT**

**ANALYTICAL DOCUMENT**

*Accompanying the document*

**Proposal for a COUNCIL DIRECTIVE**

**Implementing the European Agreement concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) concerning certain aspects of the organisation of working time in inland waterway transport**

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## TABLE OF CONTENTS

1.1.	Background .....	7
1.2.	Policy context.....	8
1.3.	Consultation and expertise .....	9
1.4.	Impact Assessment Board .....	10
2.	Problem Definition.....	10
2.1.	Characterisation on the sector .....	11
2.2.	Specific features of the sector .....	14
2.3.	The EU right to act and subsidiarity .....	18
3.	Objectives.....	18
3.1.	General objective .....	18
3.2.	Specific objectives .....	18
3.3.	Consistency with other EU policies .....	19
4.	Policy options.....	19
4.1.	Detailed comparison between the agreement and the status quo.....	20
4.1.1.	Scope and applicability .....	21
4.1.2.	Provisions on working time .....	22
4.1.3.	Provisions on night work .....	25
4.1.4.	Verification .....	26
4.1.5.	Other provisions of the agreement .....	27
4.2.	Summary comparison between the agreement and the baseline.....	29
5.	Assessment of the impacts .....	31
5.1.	Impact of the specific elements.....	31
5.1.1.	Impact of the changed scope .....	31
5.1.2.	Impacts of changes to reference period, working and rest time.....	32
5.1.3.	Impact of the provisions on night work .....	33
5.1.4.	Impact of a general right to health checks .....	34
5.1.5.	Impact of the introduced obligation to allow for verification.....	35
5.2.	Socio-economic impacts of the agreement .....	36
5.2.1.	Economic impacts .....	36
5.2.2.	Impacts on SMEs .....	37
5.2.3.	Social impacts .....	37

5.2.4. Implementation and costs..... 38  
6. Comparison of the options ..... 39  
7. Evaluation and Monitoring ..... 41  
8. Annexes..... 43

## **LIST OF ABBREVIATIONS**

CCNR	Central Commission for the Navigation of the Rhine
EEA	European Economic Area
EBU	European Barge Union
ESO	European Skippers' Organisation
ETF	European Transport Workers' Federation
EU	European Union
ITF	International Transport Workers' Federation
IWT	Inland waterway transport
NAIADES	Navigation and Inland Waterway Action and Development in Europe
PLATINA	Platform for the implementation of NAIANDES. A consortium of 23 different players in the inland navigation field from nine different EU member States. Its main objective is to support the European Commission, EU member States and third countries in the implementation of the NAIANDES action programme.
UNECE	United Nations Economic Commission for Europe

<b>Executive Summary Sheet</b>
Analytical Document accompanying proposal for a Directive implementing the European Agreement concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) concerning certain aspects of the organisation of working time in inland waterway transport
<b>A. Need for action</b>
<b>Why? What is the problem being addressed?</b>
At their own initiative the social partners at EU level in inland waterway transport negotiated an agreement on certain aspects of the organisation of working time in inland waterway transport (IWT) in accordance with Article 155(1) TFEU, because they found the general working time directive not adapted to their needs. In the agreement itself the social partners request the Commission to implement the agreement by a Council decision according to Article 155(2) TFEU.
<b>What is this initiative expected to achieve?</b>
<u>General objective</u> : to improve the socio-economic situation of the IWT sector. This general objective includes the intention to improve the working conditions for mobile workers, as enshrined in article 153 TFEU, while moving towards more equal and favourable conditions for operators. <u>Specific objectives</u> : to allow more flexibility for the operators in IWT to balance between periods of high and low workload; to ensure minimum health and safety protection for all mobile workers in the sector; to facilitate enforcement of working time rules, in particular in cross-border situations.
<b>What is the value added of action at the EU level?</b>
At EU level, the agreement provides for "more specific provisions" in the sense of Article 14 of the Working Time Directive. Article 14 refers to "Community instruments" as necessary to lay down such provisions. If the Commission does not propose implementation of the agreement by a Council Decision, it will not be possible for the social partners at EU level to decide on an autonomous implementation of the agreement in accordance with Article 155(2) TFEU. Therefore, the objective of the agreement can only be achieved at Union level.
<b>B. Solutions</b>
<b>What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?</b>
Given that the Commission can accept or reject the signatory parties' request for a legislative implementation of the agreement but cannot amend the text of the agreement, only one policy approach has been analysed, i.e. the measures defined in the agreement, and compared against the baseline, i.e. the current EU legislation (Directive 2003/88/EC on working time will remain in force for mobile workers in IWT). From the comparison of the options, it can be concluded that the agreement makes a step forward to achieve the objectives set and does so at overall reasonable costs. Therefore the Commission considers the implementation of the agreement as an appropriate way forward.
<b>Who supports which option?</b>
The European Agreement concerning working time in IWT is concluded by the EU social partners in IWT. The signatory parties of the agreement are the European Barge Union (EBU), the European Skippers Organisation

(ESO) and the European Transport Workers' Federation (ETF). On the employers' side, EBU represents national inland navigation industry organisations (freight and passenger transport), and ESO represents private inland shipping entrepreneurs (self-employed skippers). On the workers' side, ETF brings together trade union officers and representatives of national transport trade unions defending the interests of workers in the sector (freight and passenger transport).

### **C. Impacts of the preferred option**

#### **What are the benefits of the preferred option (if any, otherwise main ones)?**

The agreement will limit unfair competition on working time, as it will set minimum requirements for vessels operating within the territory of the EU Member States. Member States which have less favourable provisions than the agreement will have to adapt their legislation to the agreement. Social impacts: Having more consistent rules in line with the work schedules in the sector will facilitate implementation and enforcement of the rules. The agreement should also lead to an improvement of working conditions for mobile workers in those Member States which have no and less favourable provisions on working time compared to the agreement.

#### **What are the costs of the preferred option (if any, otherwise main ones)?**

Overall, a significant increase of costs when implementing the agreement is not expected. Several types of cost might occur: Higher costs for regular health checks and costs concerning a more systematic registration of working time in some Member States. Some costs occur once when implementing the agreement in national legislation: introducing changes to the system of working time registration; familiarisation with the new rules and how they are to be understood; and adaptation of the national legislation to the requirements of the agreement.

#### **How will businesses, SMEs and micro-enterprises be affected?**

Most of the enterprises in the sector are SMEs or micro-enterprises and most mobile workers are employed in such enterprises, especially in the Rhine region where the proportion of small enterprises is higher than in the Danube region. SMEs are well represented in the sectoral social dialogue by ESO and their representatives were amongst the strongest supporters of the agreement, as they see it as an opportunity to achieve harmonisation with potentially simpler rules on working time in the sector.

#### **Will there be significant impacts on national budgets and administrations?**

In most Member States, governments do not plan to invest more in the enforcement of the legal obligations. In the context of the Ecorys study, the LU government stated that enforcement will be more effective because the agreement provides clearer rules compared to the national legislation. The NL authorities believe that effectiveness will not change because documents that are used to verify if rules have been adhered to will not change.

#### **Will there be other significant impacts?**

No.

### **D. Follow up**

#### **When will the policy be reviewed?**

The European Commission shall, after consulting management and labour at European level, monitor the implementation of the Directive implementing the agreement. The European Commission will evaluate the Directive implementing the agreement within 5 years after its entry into force.

## 1.1. Background

Under Article 155 TFEU, the social dialogue at EU level may lead to contractual relations, including agreements. These agreements can be concluded further to a consultation process initiated by the Commission in accordance with Article 154 TFEU, or at the EU social partners' own initiative in accordance with Article 155(1) TFEU.

The Working Time Directive 2003/88/EC<sup>1</sup> concerning certain aspects of the organisation of working time lays down minimum standards in the interests of protecting workers' short-term and long-term health and safety. These include a limit on average weekly working time of 48 hours to be calculated over a four month reference period, a right to paid annual leave of four weeks and a right for night workers to health checks. The aforementioned provisions apply to mobile workers, both navigation personnel as well as shipboard personnel in inland waterways. However, crucial aspects such as the numerical limits related to daily rest, breaks, weekly rest period and length of night work do not apply to the IWT sector (Article 20 of the Working Time Directive).

At their own initiative the social partners at EU level in inland waterway transport negotiated an agreement on certain aspects of the organisation of working time in inland waterway transport (IWT) in accordance with Article 155(1) TFEU because they were of the opinion that the Working Time Directive 2003/88/EC was not adapted to their needs (e.g. reference period, work organisation), while taking into account the provisions of the Working Time Directive already applicable to mobile workers. Negotiations took place between January 2008 and November 2011. The agreement was concluded on 15 February 2012. In the agreement itself the social partners request the Commission to implement the agreement by a Council decision according to Article 155(2) TFEU.

When such agreements are concluded, they shall be implemented on the basis of Article 155(2) TFEU either in accordance with the procedures and practices specific to management and labour and the Member States so called autonomously or, at the joint request of the signatory parties, by a Council decision on a proposal by the Commission. It is up to the social partners at EU level who concluded an agreement, to decide on the modality of implementing their agreement. If management and labour jointly request implementation of their agreement by Council decision on a proposal of the Commission in accordance Article 155 (2) TFEU, the Commission can accept or reject the request for a legislative implementation, but it cannot amend the text of the agreement. The Commission cannot request the social partners at EU level to implement their agreement autonomously, as this is the prerogative of the social partners according to Article 155 (2) TFEU.

In order for the College to take an informed decision, the Commission services have to assess such agreement with regard to the representativeness and mandate of the signatory parties and the legality of its clauses.

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<sup>1</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19

In addition, when an agreement is concluded on the social partners' own initiative, such as the agreement concerning certain aspects of the organisation of working time in inland waterway transport, the Commission services have to assess the appropriateness of the EU action in the area. In line with the Smart Regulation Agenda, this assessment investigates the socio-economic impact of implementing the agreement. This shall be done in the analytical document at hand. The Commission services have prepared this document in line with the impact assessment guidelines<sup>2</sup> (including their reference to the existing general principles and minimum standards for consultation of interested parties). The structure of the document reflects the specific features of such an analytical document. It provides a proportionate analysis on the basis of an external study to assess the socio-economic impact deriving from the implementation of the agreement.

## 1.2. Policy context

Inland waterway transport plays an important role for the transport of goods in Europe. Compared to other modes of transport which are often confronted with congestion and capacity problems, inland waterway transport is characterized by its reliability, its low environmental impact and its major capacity for increased exploitation. The total external costs of inland navigation (in terms of accidents, congestion, noise emissions, air pollution and other environmental impacts) are seven times lower than those of road transport. Therefore, the Commission aims to promote and strengthen the competitive position of the inland waterway transport in the transport system, and to facilitate its integration into the intermodal logistic chain.

Among other things, the Commission promotes inland waterway transport in the NAIADES Action Programme. The first action programme NAIADES covered the period 2006-2013<sup>3</sup>. It focused on five strategic areas for a comprehensive inland waterway transport policy: market, fleet, jobs and skills, image, infrastructure. In the mid-term progress report on the implementation of NAIADES, the Commission restated the importance of social dialogue in the sector and took account of the negotiations of the social partners regarding working time as one of the main elements under the "Job and Skills" chapter of NAIADES<sup>4</sup>.

In September 2013 the European Commission adopted the NAIADES II package which covers the period 2014-2020<sup>5</sup>. The NAIADES II package includes a communication which sets out a policy action programme foreseeing interventions in the following areas: quality infrastructure; quality through innovation; smooth functioning of the market; environmental quality through low emissions; integration of inland navigation into the multimodal logistics chain; and skilled workforce and quality jobs.

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<sup>2</sup> [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf)

<sup>3</sup> Communication from the Commission on the promotion of inland waterway transport "NAIADES" - an integrated European action programme for inland waterway transport COM (2006) 006 final.

<sup>4</sup> SEC(2011) 453 final.

<sup>5</sup> Communication from the Commission: Towards Quality Inland Waterway Transport Naiades II COM(2013) 623 final.



Furthermore the NAIADES II package contains two legislative proposals: a proposal for a Directive on the technical requirements for inland waterway vessels and repealing Directive 2006/87/EC<sup>6</sup> and a proposal for a Regulation amending Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport<sup>7</sup>.

Article 14 of the Working Time Directive provides for other EU instruments containing more specific working time requirements for certain occupations or occupational activities. Such specific requirements have already been laid down by Directives for seafarers and for mobile transport workers in civil aviation and in cross-border rail services, based on European agreements concluded by the social partners for the sectors concerned<sup>8</sup>. The agreement in inland waterway transport is the fourth sector specific agreement on working time.

### **1.3. Consultation and expertise**

#### **Contributions and involvement from social partners and stakeholders**

The signatory parties of the agreement are the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF). On the employers' side, EBU represents national inland navigation industry organisations (freight and passenger transport), and ESO represents private inland shipping entrepreneurs (self-employed skippers). On the workers' side, ETF brings together trade union officers and representatives of national transport trade unions defending the interests of workers (both of navigation personnel and shipboard personnel) in the sector (freight and passenger transport).

In order to make the negotiation process transparent, EBU, ESO and ETF sent a joint letter to the transport and labour ministries of the then 27 EU Member States in November 2009 informing them of the core content of their negotiations and asking them to forward the information to the relevant national social partner organisations, given the fact that the EBU, ESO and ETF do not have affiliates in all EU Member States. No reaction from the national authorities was received. Furthermore, as part of the external study to assess the costs and benefits of the implementation of the social partner agreement on working time in the IWT sector<sup>9</sup> the consultants identified the responsible authorities and management and labour in all Member States and asked – accompanied by a supporting letter from the Commission - for information on the national legislation on working time in the IWT sector. The detailed feedback from the authorities can be found in Annex 1. Some feedback has been received from the national authorities on the potential impact of the Agreement. The UK authorities are concerned that the agreement does not provide for enough flexibility for the work on tidal rivers, like the river Thames.

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<sup>6</sup> Proposal for a Directive laying down technical requirements for inland waterway vessels and repealing Directive 2006/87/EC of the European Parliament and of the Council, COM (2013) 622 final.

<sup>7</sup> Proposal for a Regulation amending Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport, COM (2013) 621 final.

<sup>8</sup> Directive 1999/63/EC OJ L 167, 2 July 1999 on working time for seafarers, Directive 2000/79 on working time of mobile workers in civil aviation, OJ L 302 of 1.12.2000, Directive 2005/47/EC concerning working conditions in the cross border railway sector OJ L 195 of 27.7.2005.

<sup>9</sup> Ecorys 2013: Study on the expected impacts of the implementations of the European Agreement on working time in inland waterway transport - a comparison with the status quo.

For the Netherlands and Germany the agreement seems to be more detailed than the current national regulations in those countries. However, these authorities state that as the agreement will provide for a common minimum level of protection for all the EU Member States this may lead to more efficiency in enforcement. The French authorities indicated that there was not enough time available for a full assessment of the agreement. In their preliminary assessment they concluded that French national legislation seems to offer a higher level of protection for workers than the agreement. Austria and Lithuania stated that some of their national provisions are more favourable for workers than the agreement. Eleven Member States replied that they see no legal obstacles to implement the agreement in their national legislation<sup>10</sup>.

#### **External expertise and interservice group**

The Commission launched a study to assess the costs and benefits of the implementation of the social partner agreement on working time in the IWT sector<sup>11</sup>. It has been carried out by a consortium led by Ecorys. The final report was delivered in September 2013. It will be mentioned hereafter as the "Ecorys study".

An interservice Steering Group, composed of representatives of DG EMPL, DG MOVE and SG was set up to accompany and discuss the results of the above mentioned external study. This group met for the first time in March 2013. The final report of the study was discussed by the interservice Steering Group on 5 September 2013. The group met four times. A more extended group, which included in addition to the Steering Group representatives of SJ and DG SANCO, discussed the draft analytical document and met two times.

#### **1.4. Impact Assessment Board**

The Impact Assessment Board (IAB) examined this analytical document and issued an opinion on 19. December 2013. Following the recommendations for improvement in particular the problem definition, the assessment of impacts in Member States and on different stakeholders and the section on monitoring and evaluation arrangements were strengthened.

## **2. PROBLEM DEFINITION**

Activities of mobile workers<sup>12</sup> in various transport sectors, including inland waterways, were excluded by the Council<sup>13</sup> from the scope of the Working Time Directive 93/104/EEC<sup>14</sup>. According to the 16th recital of Directive 93/104/EEC the exclusion is related to the specific nature of the work in these sectors<sup>15</sup>.

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<sup>10</sup> BE, BG, DE, EE, HR, IT, NL, PL, RO, SE, SK.

<sup>11</sup> Ecorys 2013: Study on the expected impacts of the implementations of the European Agreement on working time in inland waterway transport - a comparison with the status quo.

<sup>12</sup> Article 2(7) of Directive 2003/88/EC: 'mobile worker' means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway.

<sup>13</sup> White Paper on sectors and activities excluded from the Working Time Directive, COM(97) 334 final.

<sup>14</sup> Directive 1993/104/EC concerning certain aspects of the organisation of working time, OJ L 307, 13.12.1993.

<sup>15</sup> Recital 16 of Directive 1993/104/EC: "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;"

The various transport sectors, including inland waterways, were brought within its scope by Directive 2000/34/EC<sup>16</sup>, with effect from 1 August 2003. At that stage, however, it was not possible to reach agreement on applying to mobile workers in IWT and other transport sectors the Directive's general rules on minimum daily and weekly rest periods or on limits to night work. This was due to the distinctive working conditions and particular features of their activities (e.g. working and living at the workplace for certain periods, mainly cross-border activities). It was therefore provided that Member States must take the necessary measures to ensure that such workers are entitled to "adequate rest"<sup>17</sup>, without expressing this principle in specific units of time. Directive 2003/88/EC (Working Time Directive) consolidated and repealed the 1993 and 2000 Directives.

The absence of EU rules on numerical limits on daily and weekly working time, and night work of IWT mobile workers opened the way to a diversity of national rules, which created difficulties for transport companies<sup>18</sup> and did not in all cases ensure sufficient protection for workers. This is particularly true for hotel personnel working in the river cruise industry. As the passenger navigation season lasts around eight months, hotel staff is away from home for a very long time. They often have to put up with very long working days and being accommodated for protracted periods in very small cabins<sup>19</sup>.

Article 14 of the Working Time Directive provides for other instruments at EU level containing more specific working time requirements for certain occupations or occupational activities. Such specific requirements have already been laid down by specific Directives for seafarers and for mobile transport workers in civil aviation and in cross-border rail services, based on European agreements concluded by the social partners for the sectors concerned<sup>20</sup>. Currently an impact assessment on the review of the Working Time Directive is on-going; it is not proposed to change the provisions concerning mobile workers under this review<sup>21</sup>.

## 2.1. Characterisation on the sector

The European Union's inland waterway network consists of about 37 000 kilometres of inland waterways; rivers, lakes and canals. It involves 20 Member States<sup>22</sup>.

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<sup>16</sup> Directive 2000/34/EC of the European Parliament and the Council, amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive.

<sup>17</sup> Article 2(9) 'adequate rest' requires that 'workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous 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.'

<sup>18</sup> NEA, 2011: Medium and Long Term Perspectives of IWT in the EU.

<sup>19</sup> Market Observation No. 12 (2010-II) <http://www.ccr-zkr.org/13020800-en.html>.

<sup>20</sup> See footnote 8

<sup>21</sup> Roadmap Review of the Working Time Directive.

<sup>22</sup> The Ecorys study to assess the costs and benefits of the implementation of the social partner agreement on working time in the IWT sector contains data of 19 Member States with IWT. This includes all Member States, except CY, DK, EL, IE, LV, MT, SI. The national authorities in the afore mentioned countries stated in answer to the questionnaire on working time regulation in IWT sent by Ecorys in the context of the external study that they either had no IWT sector or not in the sense of the agreement. According to the replies from employers' organisations and trade unions, IWT transport in ES and PT is negligible.

Every year, these waterways transport around 500 million tons of cargo, in particular in the densely populated and congested areas of Germany, the Netherlands, France and Belgium. These areas are irrigated by the Rhine, Scheldt, Meuse, and Seine rivers and are connected with the Danube river. The Rhine and Danube alone connect 9 Member States<sup>23</sup>. In addition four Member States have inland waterways connecting to the Rhine or Danube<sup>24</sup>.

*Structure of the sector*

<b>Box 2: Some data concerning inland waterway transport<sup>25</sup></b>	
Number of enterprises in the sector within the EU:	9,645
Total number of workers in the sector:	42,213
Total number of mobile workers in the sector:	31,007 (73%)
Total number of self-employed in the sector:	11,206 (27%)
Turn over inland waterway transport	7 585 million Euro

Transport by rivers and canals is a silent and very energy-efficient way of transporting goods. It plays a key role in the logistics bringing goods from Europe's seaports to its final destination. Its energy consumption per km/ton of transported goods is approximately 17% of that of road transport and 50% of rail transport<sup>26</sup>.

The top-5 countries with the highest IWT labour force are the Netherlands, Germany, France, Luxembourg and Italy<sup>27</sup>. They represent around 68% of the total IWT labour force in EU-28. Together with Belgium and Romania, these Member States represent around 73% of the mobile workers in EU-28. In the Netherlands, the majority of the enterprises are small companies with only a few employees. In many cases vessels are family owned and operated by a family (e.g. husband and wife owning/operating the vessel). Belgium and Germany show similar business types. On the other hand, only 11% of the IWT employment in Luxembourg is employed in small enterprises with 10 employees or less. In the Danube region the fleets are concentrated in large shipping companies.<sup>28</sup> Employment in IWT is very much a European issue, with employment rates for non-national but EU citizens going up to 100% as in the case of Luxembourg, around 27% in Belgium, 20% in Germany and 6-7% in the Netherlands. Third country nationals play a limited role. In the Netherlands 6.8% of the workforce stems from non-EU countries, the largest share originating from the Philippines<sup>29</sup> (see Annex 2 for further data on the sector).

*International agreements in the sector*

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<sup>23</sup> Austria, Bulgaria, Croatia, France, Germany, Hungary, the Netherlands, Romania and Slovakia.  
<sup>24</sup> Belgium (canals connecting to the Meuse and Scheldt rivers), the Czech Republic (Morava river and Elbe-Danube canal), Luxembourg (Moselle river), Poland (Elbe river and Elbe-Danube canal).  
<sup>25</sup> Ecorys study and EU transport in figures pocketbook 2013.  
<sup>26</sup> [http://ec.europa.eu/transport/modes/inland/index\\_en.htm](http://ec.europa.eu/transport/modes/inland/index_en.htm)  
<sup>27</sup> The IWT labour force in Italy is mainly concentrated on the passenger IWT sector. The inland waterways in Italy are not interconnected with other European inland waterways.  
<sup>28</sup> CCNR Market Observation 2012-1  
<sup>29</sup> Ecorys study.

Next to the EU and national working time regulations that have as their objective the protection of health and safety of the worker, international agreements exist in the Rhine and Danube regions. The main objective of these international agreements is the safety of the vessel operation, not health and safety of workers. Therefore, these agreements prescribe sailing time of the vessel, minimum rest periods and manning requirements. However, working time of mobile workers does not always equal sailing time of the vessel. For instance, workers on board of a ship might also work if the vessel does not sail (e.g. loading and unloading). The relationship between these international safety agreements and the EU legislation on working time is based on the rule that the provisions most favourable to workers applies. In other words, Provisions foreseen by labour regulation or collective agreements regarding longer rest periods remain valid<sup>30</sup>. In four Member States (Belgium, France, Germany and the Netherlands), the Central Commission for the Navigation on the Rhine (CCNR) provides legally binding minimum rest standards for workers who are part of the crew for navigation on the Rhine.<sup>31</sup> For the countries connected by the Danube, the Danube Commission<sup>32</sup> provides recommendations regarding rest periods for navigation personnel on the basis of UNECE Resolution 61 on Europe-wide technical requirements for inland navigation vessels.<sup>33</sup> The recommendations of the Danube Commission are not legally binding. Member States of the Danube Commission can transpose these recommendations into their national legislation. The CCNR Regulations and the provisions of the UNECE Resolution 61 on which the recommendations of the Danube Commission are based are identical.

**Box 1: CCNR standards and recommendations of the Danube Commission**

Both the CCNR standards and the recommendations of the Danube Commission are minimum rest requirements for the crew. The safety of vessel operation is the main objective of these requirements. These rules apply regardless of the employment status of the navigation personnel (worker or self-employed). They do not apply to shipboard personnel. Another tool to ensure the safety of operations are manning requirements prescribed by the aforementioned standards and recommendations. These are linked to the following exploitation schemes:

A1 scheme: the vessel sails a maximum of 14 hours continuously.

A2 scheme: the vessel sails a maximum of 18 hours continuously.

B scheme: the vessel sails a maximum of 24 hours continuously.

These sailing hours should not be confused with maximum working hours of each crew member. A crew member can also rest while the vessel is sailing. Apart from the maximum continuous sailing hours, the minimum amount of rest hours for the individual crew members is defined. The obligatory rest is defined as follows:

<sup>30</sup> CCNR (2010): Regulations for Rhine navigation personnel, Chapter 3, Section 2, Article 3.11 on obligatory rest.

<sup>31</sup> CCNR (2010): Regulations for Rhine navigation personnel, Chapter 3, Section 2 on obligatory rest time <http://www.ccr-zkr.org/13020500-en.html>.

<sup>32</sup> The Member States of the Danube Commission are: Austria, Bulgaria, Hungary, Germany, Moldova, the Russian Federation, Romania, Serbia, the Slovak Republic, Ukraine and Croatia.

<sup>33</sup> UNECE (2006), Recommendations on Harmonized Europe-Wide Technical Requirements for Inland Navigation Vessels (Resolution 61), Chapter 23, Article 23.6.1 on mandatory rest period. <http://www.unece.org/fileadmin/DAM/trans/doc/finaldocs/sc3/Resolution%20No61E.pdf>.

A1 scheme: each crew member is entitled to an uninterrupted rest period of 8 hours outside sailing time for each period of 24 hours following the end of each rest period of 8 hours.

A2 scheme: each crew member is entitled to a rest period of 8 hours, including 6 hours continuous rest outside sailing time for each period of 24 hours from the end of each rest period of six hours.

B scheme: each crew member is entitled to a rest period of 24 hours for each 48 hours.

## 2.2. Specific features of the sector

### *Increased need for flexibility of working times because of specific situation*

Mobile workers in IWT have specific, irregular work patterns compared to workers on shore. Periods of high work load are followed by periods of rest and periods of low work load. Contrary to the personnel on shore in IWT (e.g. office staff), mobile workers in IWT are required to spend a longer time away from home, as an integral part of their work. They work long hours in a short period of time (e.g. multiple voyages or season) and often work and live at their workplace. Longer rest periods are generally taken when going home at the end of the work/season. Average working time in the IWT sector usually includes a considerable amount of inactive time (for example as a result of unplanned waiting time at locks or during the loading and unloading of the craft), which may also occur during the night. Sometimes voyages might take longer than foreseen due to external circumstances. For example on tidal rivers, the time of a voyage is considerable longer, when sailing against the tide than sailing with the tide.

The maximum daily and weekly working time may therefore be longer than the working time limits stipulated in the Working Time Directive. The current provisions at EU level do not provide for the required flexibility needed in this sector in view of these specific work patterns. Furthermore, the standard reference period of maximum four months over which the average weekly working time has to be calculated (unless national laws and/or collective agreements provide otherwise) causes problems. The national transposition does not always use the available derogations described in the Working Time Directive, and the working patterns in the sector often require long hours worked in a short period followed by a longer period of rest.

### **Box 2: Working Time Directive: Derogations to the reference period**

The Working Time Directive provides the possibility to extend the maximum reference period up to 6 months by national laws or rules, or by collective agreements in the range of circumstances listed in Article 17(3) of the Directive.

The reference period can be extended to a maximum of 12 months (only by a collective agreement, which may be at national, regional or lower level) under Article 19 of the Directive, if the Member State so allows.

Whether under Article 17(3) or Article 19, the reference period may only be extended if the workers concerned are granted equivalent compensatory rest for any minimum rest periods that are missed or delayed<sup>34</sup>.

A longer reference period allows balancing the average weekly working hours over a longer period of time. This is particular useful in the IWT sector where the working time is not spread evenly over a year. However, as a result of these derogations the rules actually in force concerning the reference period differ widely between the various Member States<sup>35</sup>.

*Working time rules are not adapted to the cross-border work within the sector*

Over 75% of IWT within the EU is cross-border transport<sup>36</sup>. During a 15 day river cruise a vessel will sail from Amsterdam, via Germany and Austria to Budapest<sup>37</sup>. Cargo vessels can be sailing from Romania to Belgium, crossing five different Member States. Working time regulations vary between these Member States. It can lead to legal uncertainty for both operators, workers and enforcement authorities as to which working time regime applies. The Netherlands foresees minimum rest periods for workers during a voyage (24 hours rest per 48 hours); Germany has a limit of maximum 10 hours working time per day. Night time in the Netherlands is defined as the period between 22.00-06.00 or 23.00-7.00 depending on the employment contract. In Germany night time is defined as 23.00-6.00. The Netherlands does not have any limits on night work. Germany limits night work to 8 hours.

In practice this could mean that a ship sailing from Cologne to Rotterdam might do so in one shift (because sailing time in Germany is less than 10 hours and there is no such limit in the Netherlands), while the same ship might have to rest/change the crew on the return trip as it would go beyond the 10 hours working time accepted in Germany. On the other hand if the ship arrives at 23.00 in the evening in the Netherlands, the preceding work might be considered as night work (assuming a work contract which defines night time as starting at 22.00), while if the vessel had arrived at the same time in Germany, the shift is not night work.

Therefore, companies and workers find certain aspects of the present Working Time Directive and the related national legislation of the Member States overly complicated to comply with<sup>38</sup>. The lack of common definitions and use of derogations provided by the Working Time Directive in national working time regulations causes administrative and regulatory barriers between Member States and a difference in competitiveness.<sup>39</sup>

*Applicability of the working time rules in the sector is not clear*

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<sup>34</sup> Commission Staff Working Paper: Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time. (SEC(2010) 1611 final)

<sup>35</sup> Ecorys study

<sup>36</sup> Communication of the Commission Towards quality inland waterway transport - NAIADES II COM(2013) 623 final.

<sup>37</sup> For examples of itineraries see <http://www.rivercruise.be/vaarroutes/donau.html>.

<sup>38</sup> NEA: Final Report for the “Study on Administrative and Regulatory Barriers in the field of Inland Waterway Transport”, 2008.

<sup>39</sup> Ecorys Study

The criteria currently used to determine the applicability of the national regulations on working time of mobile workers in IWT vary widely across the Member States. Member States can use one or more criteria to determine the applicability of national law on working time of mobile workers in IWT. The flag of ship criterion is used in six Member States (Bulgaria, Estonia, Finland, Hungary, Italy, and Romania), five use the geographical position of the ship as criterion (Austria, Croatia, Germany, the Netherlands, and the United Kingdom), two Member States exclusively the seat of the operator (France and Luxembourg), and the remaining five Member States<sup>40</sup> use unique composite criteria including the ship visiting the port (Sweden) or the residence of the worker (Poland). The nationality of the employer or the worker is not used as a criterion in the national law of any country; however it is used as a criterion to determine the applicability of collective agreements in France (for workers), Hungary (for employers) and Bulgaria (for both). Furthermore, in some Member States only crew members are covered by the working time for the inland waterways and shipboard personnel (e.g. hotel, catering personnel) is not covered by it. This situation is dissatisfying to both, employers and employees, as the majority of inland waterway transport is cross-border it is not always clear which national regulations applies.

Furthermore, there are no clear common standards and rules which would ensure a certain level of protection of health and safety, while maintaining a high level of flexibility for enterprises in a sector predominantly operating across borders. The difference in working time rules between Member States is seen as problematic by both employers and employees as it allows for competition on working hours in this predominantly cross-border sector<sup>41</sup>. For example, the study by NEA in 2008 indicates that the legislation of Austria concerning the IWT sector including working time is usually a lot more protective and more specific than the laws of other countries along the Danube. Those countries therefore gain a competitive advantage over Austria by operating under more flexible, less protective rules, which would allow the vessel more sailing time<sup>42</sup>. Being able to sail longer and/or to sail with less crew on board could lower the costs for the operator, in comparison to operators who operate under more protective rules which allow for less sailing time.

#### *Enforcement of the working time rules is difficult*

Furthermore, working time rules which are not adapted to the specific features of the inland transport sector reduce compliance with the rules<sup>43</sup>. This is reported by Member States in both the Rhine and the Danube region. It is believed that non-compliance in practice is fairly widespread. In 30-50 % of the controls, the registration of working time or manning requirements is not in accordance with the applicable legislation. Part of non-compliance is due to the complexity and lack of transparency of existing rules. However, companies which apply the rules consider those which do not as unfair competitors<sup>44</sup>.

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<sup>40</sup> BE, LT, PL, SE, SK. CZ did not provide any information on the issue.

<sup>41</sup> Letter by EBU, ESO and ETF of 16 March 2012 to the Commission.

<sup>42</sup> NEA 2008 Administrative and Regulatory Barriers in the field of Inland Waterway Transport (Summary and cross analysis).

<sup>43</sup> ECMT 2006: Strengthening inland waterway transport: pan-european co-operation for progress.

<sup>44</sup> In the context of the NEA 2008 study this was reported by among others BE, DE, NL, AT, but it is believed that this issue concerns more EU Member States.



Different interpretation and implementation of rules can also be noticed which makes compliance as well as controls even more difficult.

### *Working hours and the risks of accidents*

Mobile workers in IWT often have a high responsibility – such as the responsibility for the safe handling of the cargo or passengers and the safe handling of the vessel. The work is demanding<sup>45</sup> and includes safety risks<sup>46</sup>. When linking the number of accidents to the number of workers in the IWT sector, the number of casualties is quite high in IWT. For example, if, on that basis, IWT is compared with the construction industry, the amount of casualties reported is 1.65 times higher in IWT<sup>47</sup>. In recent years data show an increase of incidents and accidents in different Member States.. For instance the transport inspection in the Netherlands signalled an increase in accidents in IWT of 26% between 2004 and 2012.<sup>48</sup> In Romania the accident rate in 2012 was 35% higher than in 2009. In Germany and Bulgaria smaller increases have been noted<sup>49</sup>. Infringements on sailing and resting times may not be the only cause for these problems, however, several operators have confirmed that too long working hours are an issue of increasing importance in the sector<sup>50</sup> and working conditions have deteriorated due to the difficult economic situation<sup>51</sup>. Fatigue is identified as one of the risk factors in the sector<sup>52</sup>.

This is confirmed by a number of studies<sup>53</sup> which show a link between long working hours, particularly over prolonged periods, and negative effects such as increased rates of accidents and mistakes, increased difficulties in reconciling work, private and family life, stress and fatigue levels, short term and long-term health<sup>54</sup>.

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<sup>45</sup> Dipl.-Psychologe Dr. Stefan Poppelreuter: Psychische Belastungen am Arbeitsplatz – auch für die Binnenschifffahrt ein Thema, November 2012.

<sup>46</sup> Although inland navigation is a safe mode of transport in comparison with other transport modalities in terms of accidents per tonnekm. when comparing the amount of fatalities in IWT with the amount of fatalities reported for truck drivers, the balance for IWT turns negative. Although the number of fatalities for truck drivers is higher than the number of fatalities in IWT, it must be noted that the number of workers in road haulage is more than 9 times the amount of workers in IWT. Taking this into account, it appears that the risk for an IWT worker in the Netherlands being involved in a fatal accident is 1.8 times higher for IWT, compared to the road sector . Source Transport en Logistiek Nederland (TLN), Series Transport in Cijfers (2004-2010)

<sup>47</sup> RIVM, report Bouwnijverheid

<sup>48</sup> Staat van de Transportveiligheid 2012, inspectie leefomgeving en transport.

<sup>49</sup> [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=iww\\_ac\\_nbac&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=iww_ac_nbac&lang=en)

<sup>50</sup> Ecorys study

<sup>51</sup> Inspection Human Environment and Transport, the Netherlands, Toezichtsplan over water (Water Supervision plan 2013)

<sup>52</sup> European Agency for Safety and Health at Work 2011: OSH in figures: Occupational safety and health in the transport sector — An overview

<sup>53</sup> COM (2010) 1611 on the Implementation of the 2003/88/EC Working Time Directive, gives 16 references to literature on this in footnote 268 on page 87. See also Deloitte study to support impact assessment of Working Time Directive, 2010, Annexe I.

<sup>54</sup> Working time/Work intensity, European Foundation for the Improvement of Living and Working Conditions/Paris School of Economics, 2009. See also Health of people in working age, 2011: The highest occurrence of accidents was reported by manual workers. Manual work is often related to other unfavourable work characteristics such as shift work and atypical working hours, which also were found to be associated with a high occurrence of accidents.

The competitive nature of the sector of the transport sector and the economic situation will not improve significantly in the foreseeable future<sup>55</sup> Therefore the current situation will not change. The increasing trend mentioned above mostly likely will remain as well.

### **2.3. The EU right to act and subsidiarity**

Article 14 of the Working Time Directive allows for more specific working time requirements at EU level concerning particular occupations or activities. Such requirements have already been laid down in specific EU Directives for seafarers and for mobile transport workers in civil aviation and in cross-border rail services, based on European agreements concluded by the social partners for the sectors concerned.

The present agreement provides "more specific provisions" in the sense of Article 14 of the Working Time Directive. Article 14 refers to "Community instruments" as necessary to lay down such provisions. Therefore, the objective of the agreement can only be achieved at Union level.

Social partners were convinced of the need for action in the area. They negotiated an agreement at Union level in accordance with Article 155(1) TFEU. Subsequently, they asked this agreement to be implemented by a Council decision following a proposal from the Commission pursuant to Article 155(2) TFEU.

## **3. OBJECTIVES**

### **3.1. General objective**

Improve the socio-economic situation of the IWT sector. This general objective includes the intention to improve the working conditions for mobile workers, as enshrined in article 153 TFEU, while moving towards more equal and favourable conditions for operators.

### **3.2. Specific objectives**

In order to reach the general objective set above, the present agreement has the following specific objectives:

- To allow more flexibility for the operators in IWT to balance between periods of high and low work load;
- To ensure minimum health and safety protection for all mobile workers in the sector;
- To facilitate enforcement of working time rules in particular in cross-border situations.

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CCNR: Market Observation 2013 [http://www.ccr-zkr.org/files/documents/om/om13\\_en.pdf](http://www.ccr-zkr.org/files/documents/om/om13_en.pdf)

### 3.3. Consistency with other EU policies

Improving the quality of work and working conditions, in particular reviewing the existing legislation and providing for a smarter EU legal framework for employment and health and safety at work constitute key actions within the context of "An Agenda for new skills and jobs: A European contribution to full employment"<sup>56</sup>.

Enabling fair competition and a level playing field in the IWT sector is in line with the objective of the 2011 Transport White Paper<sup>57</sup> to create a genuine Single European Transport Area by eliminating all barriers between national systems. A higher degree of convergence and enforcement of among others social standards is an integral part of this strategy.

## 4. POLICY OPTIONS

As described the Commission can consider only two options:

- **Not to propose implementation of the agreement by a Council decision in accordance with Article 155 TFEU (the baseline):** the current EU legislation, Directive 2003/88/EC on working time and Directive 94/33/EC on the protection of young people at work will remain in force for mobile workers in IWT, but there will be no sector specific working time legislation at European level.

The Working Time Directive 2003/88/EC concerning certain aspects of the organisation of working time lays down minimum standards in the interests of protecting workers' short-term and long-term health and safety. These include a limit on average weekly working time of 48 hours to be calculated over a four month reference period, a right to paid annual leave of four weeks and a right for night workers to health checks. The aforementioned provisions apply to mobile workers, both navigation personnel as well as shipboard personnel in inland waterways.

However, crucial aspects such as the provisions concerning numerical limits related to daily rest, breaks, weekly rest period and length of night work do not apply to the IWT sector, as a result of the exception set out in Article 20(1). This provision requires Member States instead to ensure that such workers are entitled to '*adequate rest*', which is defined in *qualitative* terms: the Directive leaves it to Member States to specify how this conceptual requirement is to be expressed in *units of time*<sup>58</sup>.

The current situation (baseline) is very much characterised by the national legislation and the safety regulations which are in place in accordance with the international agreements such as CCNR and the like<sup>59</sup>.

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<sup>56</sup> Communication from the Commission on: 'An Agenda for new skills and jobs: A European contribution towards full employment', COM(2010) 682 final.

<sup>57</sup> COM(2011) 144 final.

<sup>58</sup> 'Adequate rest' is defined at Article 2(9) of the Working Time Directive as follows: " '*Adequate rest*' means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous 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."

<sup>59</sup> The recommendations of the Danube Commission are identical to the CCNR Regulation.

- **To propose implementation of the agreement by a Council decision in accordance with Article 155 TFEU:** Directive 2003/88/EC and Directive 94/33/EC (young people at work) will be complemented by a Directive which will provide more specific rules at EU level on binding and common definitions concerning the organisation of working time in IWT.

The agreement concerns the following areas: limit to daily and average weekly working time expressed *in units of time*, reference period, annual leave, definition of working days and rest days, special provisions regarding seasonal work on passenger vessels, minimum daily and weekly rest periods, breaks, maximum working time during night time, special provisions regarding working time of workers aged under 18, verifications, emergency situations, health assessment and right to transfer for night workers, safety and health protection and pattern of work.

In its provisions the agreement gives a binding and common definition in units of time of the required minimum daily and weekly rest periods, and the maximum working hours per week and at night.

The agreement will apply to mobile workers: navigation crew and shipboard personnel, but not to self-employed persons (owner-operators).

The agreement contains a provision on applying the "more favourable provisions" (Paragraph 17(1)). That means in cases where national legislation or collective agreements contain more protective provisions in this regard, nothing must change as a consequence of implementing the agreement.

#### **4.1. Detailed comparison between the agreement and the status quo**

Before assessing the impacts of implementing the proposed agreement the substantial changes as compared to the baseline need to be identified. This is a challenging task as the baseline is defined through a very complex set of rules. In the remainder of section 4.1 for each of the areas of the agreement first the main points and the substantial changes are identified, followed by a table which aims to indicate which Member States already have legislation in place on working time in the inland waterway which is equal to the provisions of the agreement or more favourable, and which Member States have less favourable provisions than the agreement<sup>60</sup>. A more detailed comparison of the rules can be found in Annex 3.

Provisions of Agreement which are similar to the provisions which already apply to mobile workers in IWT are not compared. This concerns the provisions on annual leave<sup>61</sup> (Paragraph 10 of the agreement), health and safety of night workers<sup>62</sup> (paragraph 15) and work patterns<sup>63</sup> (paragraph 16).

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<sup>60</sup> The provisions in the agreement are compared to the national legislation of the Member States. If a Member State's provisions on working time in the inland waterway sector are considered to be more favourable, it means that these provisions contain more protective provisions. Less favourable provisions that the provisions are less protective than the provisions in the Agreement (e.g. less rest time, more working time, health checks limited to a certain category of workers, no special provisions for young people)

<sup>61</sup> Article 7 of the Working Time Directive contains the provisions on annual leave.

<sup>62</sup> Article 12 of the Working Time Directive contains similar provisions on health and safety of workers.

<sup>63</sup> Article 13 of the Working Time Directive contains similar provisions on working time Directive.

#### 4.1.1. *Scope and applicability*

The agreement is limited to the IWT sector and to ‘*mobile workers*’ as defined under article 2(7) of the Working Time Directive<sup>64</sup>. The scope of the agreement includes both navigation personnel and shipboard personnel.

The agreement does not extend its scope to the self-employed as do for example the CCNR Regulations. Finally, the agreement does not distinguish between different employment contracts, e.g. mobile workers recruited via a recruitment agency.

The geographical position of the ship determines the applicability of the agreement. The Working Time Directive does not contain any specific provisions in this regard. In six Member States (Belgium Croatia, Germany, the Netherlands, Poland, United Kingdom), the national legislation follows already this approach, in other countries different – sometimes more sophisticated – approaches, e.g. a combination of seat of operator and location of ship, do apply).

The main difference between the agreement and the baseline in terms of scope is therefore a clear definition of which provisions apply and that the same working time provisions expressly apply to both crew members and shipboard personnel.

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<sup>64</sup> Article 2(7) of the Directive provides that “ ‘*mobile worker*’ means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway; ”

**Table 1: Scope and Applicability**

<b>Agreement</b>	<b>Member States' status quo is equal or more favourable</b>	<b>National legislation contains less favourable provisions</b>
Applicable to both crew and shipboard personnel	AT, BE, BG, CZ, DE, EE, FI, FR, IT, HU, LT, PL, SE SK	HR, NL, RO <sup>65</sup> , LU, UK
Applicable to all mobile workers, irrespective of the nature of their employment relationship	AT, BE <sup>66</sup> , BG, CZ, DE, EE, FI, IT, HU, LT, LU, NL, PL, SE, SK, UK	FR, HR, IT and RO
Applicable on board of any craft operated within the territory of a Member State in the commercial IWT sector.	BE, HR, DE, NL, PL UK	Flag of the ship: EE, FI, HU, IT, LT, RO and SE Seat of the Operator: LT, LU Other: AT, BG, FI, FR, SK Unknown: CZ  In the context of national collective agreements additional criteria such as the nationality of the worker (FR) or the employer (HU), seat of the operator (BE) or both (BG) are used.

*Source: Ecorys Study*

#### 4.1.2. Provisions on working time

Article 6 of the Working Time Directive sets a limit of 48 hours for average weekly working time, calculated over a standard reference period of four months, according to Article 16 of the Working Time Directive. The reference period may be extended under different derogations. The agreement provides for the same limit as the Directive to average weekly working time (maximum 48 hours). The agreement extends the maximum reference period to 12 months.

<sup>65</sup> HR, NL, and RO implemented the rest time regulations in accordance with the CCNR regulations and the like. These only apply to workers in nautical functions not to shipboard personnel.

<sup>66</sup> The recruitment of temporary agency workers or via a manning agency in the IWT sector is prohibited in BE by a royal decree of 13 December 1999.

Furthermore, the agreement provides for a limit to average weekly working time of 72 hours within any 4 months period in case of a specified work schedule. This provision introduces working time limits adapted to the work schedules in the sector and takes into account the considerable amount of inactive time spent on board.

For the time being, the length of the reference period, as fixed by the national rules transposing the Working Time Directive in different Member States, differs between three months in Belgium and 12 months in Sweden. At the moment a reference period of 12 months is possible, under certain conditions, in Austria, Belgium, Czech Republic, France, Hungary, Italy, Netherlands and United Kingdom. Only Luxembourg does not provide national legislation in this respect, however collective agreements define 40 hours per week as the usual working time.

The introduction of a limit of average weekly working time of 72 hours within four months is new. In schedules with more working than rest days, e.g. three weeks on board and one week off, this limit will give operators flexibility in organising the work time.

All Member States already fulfil the proposed requirement of 6 hours uninterrupted daily rest. Most Member States fulfil the proposed minimum requirement of 10 hours rest in a 24-hour period, derived from their limits to daily working time. Hungary appears to allow a maximum limit of 16 hours working time in a 24-hour period, which would not allow for the minimum 10 hours of rest. Croatia, Netherlands and Romania provide for a minimum 24 hours rest within a 48 hours period.

The main change between the agreement and the baseline in terms of reference period, working time and rest periods comes down to the establishment of limits on daily and weekly working time and minimum rest periods *in units of time* at EU level which are adapted to the work schedules in the sector, and an extension of the maximum reference period to 12 months (see Annex 3, Box 2).

**Table 2: Working time, rest and reference period**

<b>Agreement</b>	<b>Member States' status quo is equal or more favourable</b>	<b>National legislation contains less favourable provisions</b>
<p><b>Daily limits to working time</b></p> <p>Working time is based on an 8 hour-day (paragraph 3).</p> <p>Working time shall not exceed 14 hours in any 24-hour period (paragraph 4(1)).</p>	<p>AT, BE, BG, CZ, DE, EE, FI, FR, LT, LU<sup>67</sup>, SE, SK.</p>	<p>HU<sup>68</sup>, HR, NL<sup>69</sup>, IT<sup>70</sup>, PL<sup>71</sup>, RO<sup>72</sup>, UK<sup>73</sup></p>

<sup>67</sup> No national legislation, only collective agreement.

<sup>68</sup> HU (12 hours plus 4 hours availability).

<sup>69</sup> In NL working time regulations for the IWT sector are based on the CCNR regulations which only prescribe minimum rest requirements for the safety of the vessel. In interviews done in the context of the Ecorys study, Dutch operators stated that although national legislation in principle allows for more

<p><b>Limit to weekly working time</b></p> <p>In all cases, an average of 48 hours a week within <b>12 months shall not be exceeded</b> (paragraph 3(2). Hence, the maximum amount of working time within 12 months is 2304 hours (48 hours x 52 weeks minus four weeks of annual leave)</p> <p>In addition, working time shall not exceed 84 hours in any seven day period (paragraph 4(1))</p>	<p>AT, BE, BG CZ, FI, FR, HU, IT, NL UK, DE, EE, LT, PL, NL<sup>73</sup>, RO, SE, SK, LU<sup>74</sup></p>	
<p><b>Special provision allowing longer average weekly working time over a limited period</b></p> <p>If, according to the work schedule, there are more working days than rest days, an average weekly working time of 72 hours shall not be exceeded over a four-month</p>	<p>N/A no equivalent provisions in the national legislation of the 28 Member States.</p>	

than 14 hours daily working time, in practice operators apply less than 14 hours. depending on the sailing schedule applied.

<sup>70</sup> According to the Ecorys study IT national legislation does not contain any daily working time limit for workers in the IWT sector.

<sup>71</sup> According to the Ecorys study PL does not have any legislation in this area.

<sup>72</sup> The Romanian national legislation seems to be based on the recommendations of the Danube Commission which are similar to the CCNR Regulations. Romanian operators interviewed for the Ecorys study indicate that in practice daily working day is less than 14 hours.

<sup>73</sup> Only limit on average weekly working time of 48 hours.

<sup>74</sup> No national legislation, only collective agreement on working time in IWT.



period.		
<b>Minimum daily and weekly rest periods</b>	AT, BE, BG, CZ, DE, EE, FI, FR, LT, SK, SE.	HU <sup>75</sup> , IT, LU, PL HR, NL, RO <sup>76</sup> , UK <sup>77</sup> .
Rest periods shall not be less than 10 hours in each 24-hour period, of which at least six hours are uninterrupted, and 84 hours in any seven-day period.		

Source: *Ecorys Study*

#### 4.1.3. Provisions on night work

The agreement provides for a definition of night time as the time between 23.00-6.00. The definition of night time currently varies across the Member States<sup>78</sup>. The definition laid down in the agreement does not imply changes in the majority of the Member States as they have the same definition or have a more extended definition. Implementation of the agreement will have an impact on countries who either have defined night time more limited than the agreement, such as Sweden and United Kingdom, or countries who have not regulated this at all, such as Estonia and Italy.

As the agreement provides for a weekly limit on night work, it will impact the most, the 8 Member States<sup>79</sup> who have not provided for any limits on night work. As the larger part of the IWT sector in Italy consists of passenger ferries over a short distance, this will only impact on a small part of the IWT sector in Italy (see Annex 3, Box 3).<sup>80</sup>

The provisions on the limit to night work in the agreement will require some Member States to adapt their national legislation as they allow a daily working time of 8 hours or more<sup>81</sup>. However, this will improve consistency of rules across Member States. The introduction of a limit on nightwork (42 hours/week) will to a very minor extent affect ships sailing under the CCNR exploitation regimes A1 or A2 (there can only be an impact when work continues for some time while the ship is not sailing). For ships sailing under exploitation regime B in situations where neither national legislation nor sectoral agreements prohibit this, the agreement might imply some changes.

<sup>75</sup> HU: 12 hours of daily working time plus 4 hours availability. This would mean that the hours of rest are less than 10 hours.

<sup>76</sup> HR, NL and RO: Depending on the sailing schedule of the vessel (see for detailed information Annex 3, box 2).

<sup>77</sup> UK national legislation only prescribes limits on average weekly working time.

<sup>78</sup> More detailed information on Member States' definition of 'night time' and 'night worker' is contained in Commission Working Paper, Implementation of Directive 2003/88/EC by Member States, SEC 2010 1611, in chapter 8 "night work".

<sup>79</sup> BU, FI, LT, IT, NL, RO, SE and UK

<sup>80</sup> Ecorys study.

<sup>81</sup> HU, HR, NL, IT, PL, RO, UK

**Table 3: Night work**

Agreement	Member States' status quo is equal or more favourable	National legislation contains less favourable provisions
<b>Night time :</b> the time between <u>23:00</u> and <u>06:00</u> <sup>82</sup>	AT, BE, BG, CZ, DE, FI, FR, HR, HU, LT, LU, NL, PL, RO, SK.	EE (undefined), IT, SE, UK.
<b>Limit to night work</b> Paragraph 9: Based on a night time of seven hours, the maximum weekly working time during night time shall be 42 hours per seven day period <sup>83</sup> .	CZ, FR, HR, HU, PL <sup>84</sup> , SK <sup>85</sup> .	AT, BE, BG, DE, FI, IT, LT, LU, NL, RO, SE, UK <sup>86</sup>  EE: undefined

Source: *Ecorys study*

#### 4.1.4. Verification

The registration and verification of working time in inland waterway transport is regulated by the national authorities. Most Member States verify the working time on board of inland waterway vessels. In the majority of Member States verification takes place at company level, on the basis of the working time documents per employee or on the basis of the ship's logbook or a combination of the aforementioned methods. Verification is done by the national enforcement authorities as designated by the national authorities in their national legislation on working time. In practice this is often the labour inspectorate, the inspectorate for (maritime) transport or the water police. For example, in the Netherlands the registration of rest times in the log book is verified and enforced by the inspection for transport. In Germany, the CCNR Regulations are verified and enforced by the river police (Wasserschutzpolizei), in Belgium by the Shipping Police. In the United Kingdom the regulations on inland waterways are enforced by the Marine and Coastguard Agency and in Romania by the Naval Authority.

The agreement establishes common methods for registration and verification of working time at EU level. The registration should be jointly endorsed by employers and employees. The social partners wished to establish a common mechanism for verification of the provisions of their agreement, which would enable an efficient checking of working time by the enforcement authorities, which at the same time would not pose an administrative burden on the operators<sup>87</sup>.

<sup>82</sup> Equal, more favourable in this context means: The same time limit (23.00-6.00) or same amount of hours (seven) is defined as night time.

<sup>83</sup> In this context equal or more favourable means not exceeding 42 hours in any 7 day period.

<sup>84</sup> PL: if night work is dangerous.

<sup>85</sup> SK reference period of 6 months.

<sup>86</sup> BE, DE, NL, RO apply the CCNR Regulations or the like.

<sup>87</sup> Letter sent by EBU, ESO and ETF to the Commission concerning the agreement on 16 March 2012.

Belgium, Croatia, Hungary, Poland, Netherlands, Romania and Sweden do not yet register working time. However, with the exception of Poland and Sweden, these Member States require that the crew members' rest times are daily registered in the logbook according to CCNR regulations and alike. (See Annex 3, Box 4) That means the main change introduced by this obligation will be a more consistent reporting.

**Table 4: Verification**

<b>Agreement</b>	<b>Member States' status quo is equal or more favourable<sup>88</sup></b>	<b>National legislation contains less favourable provisions<sup>89</sup></b>
<p>According to paragraph 12 of the agreement, operators are required to keep records of working and rest time of each individual crew member on board of the vessel.</p> <p>These records shall be kept on board until at least the end of the reference period.</p> <p>3. The records shall be examined and endorsed at appropriate intervals (no later than by the end of the following month) jointly by the employer or employer's representative and by the worker.</p>	<p>AT, BG, DE, EE, FI, FR, LT, SK, UK</p>	<p>BE, HR, HU, NL, RO, IT, PL<sup>90</sup>.</p>

*Source: Ecorys study*

#### 4.1.5. *Other provisions of the agreement*

##### ***Protection of Young People***

The protection of young people at work is regulated by Directive 94/33/EC<sup>91</sup>. According to the agreement mobile workers in IWT under the age of 18 will continue to be covered by the aforementioned Directive. A provision is introduced in the agreement to allow Member States to authorise night work by young people over the age of 16 years, if it is necessary for their training. Bulgaria, Finland, Croatia, Netherlands, and Sweden already allow night work by young people as part of their training. France and Lithuania prohibit night work for minors.

<sup>88</sup> No information available on CZ, LU and SE.

<sup>89</sup> Less favourable means in this context: working time records are not kept, or not kept on board of the ship.

<sup>90</sup> HR, NL, RO: according to the Rhine Regulations and alike, these countries are already obliged to register the rest time of navigation personnel.

<sup>91</sup> Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, O.J. L 216 of 20 August 1994.

No information is available on this aspect of work in the inland waterway sector from Austria, Czech Republic, Italy, Poland, Slovakia, and United Kingdom.

This provision will have little impact on Member States as it will remain up to the national authorities to authorise night work for young people in this sector. However it will provide for a greater consistency between the EU Member States as in each Member State, national authorities will be allowed to authorise night work for young people, as long as certain criteria are fulfilled.

**Table 5: Protection of minors**

<b>Agreement</b>	<b>Member States' status quo is equal or more favourable<sup>92</sup></b>	<b>National legislation contains less favourable provisions<sup>93</sup></b>
<p>1. Workers under the age of 18 shall be covered by Directive 94/33/EC on the protection of young people at work.</p> <p>2. By way of exception, Member States may in national legislation authorise work by young people over the age of 16, who are no longer subject to compulsory fulltime schooling under national law, during the period in which night work is prohibited if this is necessary in order to achieve the objective of are recognised training course and provided that they are allowed suitable compensatory rest time and that the objectives set out in Article 1 of Directive 94/33/EC are not called into question.</p>	<p>AT, BE, BG, CZ, DE, EE, FI, FR, HR, HU, LT, NL, PL, RO, SK, SE, UK</p>	<p>IT, LU</p>

*Source: Ecorys Study*

### ***Health checks***

As mobile workers in IWT are exposed to noise, vibration and different working patterns as long working hours, night work and shift work, paragraph 14 of the agreement provides for an annual health assessment free of charge for *all workers to which the agreement applies*<sup>94</sup>.

<sup>92</sup> Equal or more favourable in this context means in this case, no night work allowed, or less night work than what the agreement would allow.

<sup>93</sup> No information available for AT, BE, CZ, HU, PL, SK and UK

<sup>94</sup> A similar provision concerning annual health checks free of charge exists for workers in the maritime sector (Clause 13(1) of the Annex to Directive 1999/63/EC). Costs are either born by the employer or may be conducted in the national health system.

The agreement indicates specific points which should be taken into account during this assessment. The Working Time Directive requires health assessment under Article 9(1), which also applies to mobile workers in IWT, but only for *night workers* which are entitled to free health checks before being assigned to night work, and *at regular intervals* thereafter.

In most Member States mobile workers are entitled to free health checks. In the Netherlands and Finland, health checks are conditional on being necessary such as for identifying risks at the work place, i.e. health checks take place to monitor the suitability for the function on board. United Kingdom and Poland have regular health checks only for night workers.<sup>95</sup>

The entitlement to health checks for all mobile workers is likely to have implications for all Member States. It will assure consistency within the EU in this area and it will apply to all workers on board of a vessel, both navigation personnel and shipboard personnel.

#### **4.2. Summary comparison between the agreement and the baseline**

Table 6 provides an overview of the main substantial legal changes that the implementation of the agreement in the 28 Member States will require. The agreement contains provisions on more favourable provisions and a non-regression clause. As a consequence, Member States are allowed to maintain or introduce more favourable legislation for the protection of the health and safety of mobile workers than the minima required by this agreement. Member States may also allow for the application of more favourable collective labour agreements. Therefore, the agreement will have no direct impact on the situation in Member States which already have equal or more favourable provisions than the agreement. It will have an impact on Member States who have no or less favourable provisions in their national legislation.

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<sup>95</sup> Ecorys study.

**Table 6: Comparison between the Member States**

<b>Working time aspect</b>	<b>Member States' status quo is equal or more favourable</b>	<b>National legislation contains less favourable provisions</b>
	<b>Equal or more favourable</b>	<b>Less favourable rules</b>
Maximum working time in 24 hours period	AT, BE, BG, CZ, DE, EE, FI, FR, LT, LU <sup>96</sup> , SE, SK.	HU <sup>97</sup> , HR, NL <sup>98</sup> , IT <sup>99</sup> , PL <sup>100</sup> , RO <sup>101</sup> , UK <sup>102</sup>
Average weekly working time in 12 months.	AT, BE, BG, CZ, DE, EE, FI, FR, HR, HU, IT, LT, LU, NL, PL, RO, SE, SK, UK	
Length of night work <sup>103</sup>	CZ, FR, HR, HU, PL <sup>104</sup> , SK <sup>105</sup>	AT, BE, BG*, DE*, FI, IT, LT, LU, NL*, RO*, SE, UK
Verification <sup>106</sup>	AT, BG, DE, EE, FI, FR, LT, SK, UK <sup>107</sup>  No information available on CZ en SE.	BE, HR, HU, NL, RO, IT, PL <sup>108</sup> .

\* Where applicable the CCNR rules or alike provide already a similar level of protection. However shipboard personnel on board of passenger ships are not covered by these rules.

<sup>96</sup> No national legislation, only collective agreement.

<sup>97</sup> HU (12 hours plus 4 hours availability).

<sup>98</sup> In NL working time regulations for the IWT sector are based on the CCNR regulations which only prescribe minimum rest requirements for the safety of the vessel. In interviews done in the context of the Ecorys study, Dutch operators stated that although national legislation in principle allows for more than 14 hours daily working time, in practice operators apply less than 14 hours depending on the sailing schedule applied.

<sup>99</sup> According to the Ecorys study IT national legislation does not contain any daily working time limit for workers in the IWT sector.

<sup>100</sup> According to the Ecorys study PL does not have any legislation in this area.

<sup>101</sup> The Romanian national legislation seems to be based on the recommendations of the Danube Commission which are similar to the CCNR Regulations. Romanian operators interviewed for the Ecorys study indicate that in practice daily working day is less than 14 hours.

<sup>102</sup> Only limit on average weekly working time of 48 hours.

<sup>103</sup> No information received from EE.

<sup>104</sup> PL: if night work is dangerous.

<sup>105</sup> SK: reference period of 6 months.

<sup>106</sup> No information available on CZ, LU, SE.

<sup>107</sup> Most countries have more than method of keeping and verifying working time

<sup>108</sup> HR, NL, RO: according to the Rhine Regulations and alike, these countries are already obliged to register the rest time of navigation personnel.

## 5. ASSESSMENT OF THE IMPACTS

Particular importance will be paid in this section to the consequences in the Netherlands, Germany, France, Luxembourg, Italy, Belgium, Romania as these Member States represent around 73% of the total estimated mobile workers in EU-28. Cyprus, Denmark, Greece, Ireland, Latvia, Malta, and Slovenia do not avail of employment in IWT and are therefore not looked at in this analysis. In Spain and Portugal according to the social partners IWT is negligible and therefore also these countries were not looked at in detail.

The provisions under discussion were found to not have any direct impact on the environment. Indirect impacts could occur if the legislation in question reduces – as a consequence of better working conditions – the number of accidents (for example avoiding the leakage of chemicals or oil as a consequence of shorter average working hours). Nevertheless, it seems very ambitious to stretch the analysis to that point. Therefore environmental impacts have not been considered in this analysis.

### 5.1. Impact of the specific elements

#### 5.1.1. *Impact of the changed scope*

Most Member States apply specific working time rules to all mobile workers, both navigation crew and shipboard personnel, in inland waterways. However, in five Member States<sup>109</sup> specific working time rules only apply to the crew and not to shipboard personnel. For these five countries there are altogether about 3,500 mobile workers working on passenger vessels, 2,400 of them in the Netherlands. Some of those are navigation personnel, which are covered by the Rhine Regulations and alike.. The available data do not provide for a further specification.

Working conditions for shipboard personnel on board of passenger vessels can reportedly be extremely hard. In that sense any improvement and consolidation should be considered important and welcome.<sup>110</sup> A second point of change induced by the agreement is the decision to apply the agreement based on the geographical position of the ship. This will also have an effect on the enforcement of the working time limits set in the agreement.

In other countries with interconnected waterways, such as Austria, Bulgaria, France, Hungary, Slovakia, where 3,900 mobile workers are working in the sector, this will clarify the situation for ship-owners, operators and enforcement bodies. They will be in a better position to judge which minimum working time rules to apply to the extent that national rules on working time limits continue to differ after transposition of the Agreement.

In Member States which do not avail of interconnected waterways (like Lithuania, Finland, Italy, United Kingdom and Sweden), lack of clarity is not so much an issue. In cases where the operator has his seat in one country, while operations take place in another Member State, and the country where the seat is, uses the place of business as a principle to carry out inspections, the agreement would now mean that these ships could expect to be checked.

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<sup>109</sup> HR, NL, RO, LU, UK

<sup>110</sup> Market Observation No. 12 (2010-II), <http://www.ccr-zkr.org/13020800-en.html>. See also <http://www.zeit.de/2012/11/Kreuzfahrtschiff-Zimmermaedchen>.

Irrespective of more detailed national provisions, national monitoring/enforcement bodies which check compliance with working time rules can rely under the new rules that all ships have to comply at least with the minimum standards and that working time can be verified in accordance to working time records.

In substance, the application of a uniform rule for the validity of working time rules means that it should no longer be possible that there is legal uncertainty on which working time regime applies. When drafting the agreement both employers' and trade union representatives expected this legal certainty to be a significant improvement.

As a consequence of this clarity, enforcement bodies might be more effective in checking compliance with the existing rules. That could, according to the views of the social partners, improve overall compliance and thus also improve fair competition and working conditions in the sector.

#### 5.1.2. *Impacts of changes to reference period, working and rest time*

While the detailed provisions in this area are very complex, the analysis in chapter 4 shows that the main change compared to the baseline is the extension of the maximum reference period to 12 months. The definition of an average limit of 48 hours/week over this period aligns the agreement with the maximum flexibility allowed by the general Working Time Directive.

Any other limit for the average weekly working hours would introduce inconsistencies with the existing EU legislation and potentially undermine its validity. In practice in most Member States social partner agreements or national legislation define a normal working week with fewer hours. This means that the maximum annual working hours will hardly be affected by this new provision. During the negotiations of the agreement, employers did not express concerns about this provision. In interviews carried out for the Ecorys study, on the basis of a first assessment of the agreement, a considerable number of Dutch and Romanian operators (40% and 70%) of both small and large ships believed that extra staff would be needed because of the new limits on working time per year. In Romania some operators indicated that this is partly due to the provisions on four weeks annual leave in the agreement. Annual leave is already a right for mobile workers according to the Working Time Directive and should therefore not lead to additional costs or the need to hire additional staff. Since mobile workers work often in shifts during continuous voyage, instead of hiring extra staff, it might be possible to have more frequent crew changes during a voyage. Operators in the Netherlands and Romania also indicated that having the limits laid down in legislation should lead to a slightly better competitive position for operators and the safety on the vessel would increase<sup>111</sup>.

In Hungary, operators indicated also the need to hire more staff without providing an exact number. This was stated although in practice the working time on a yearly basis does not change as compared with the current regulations. In Poland, operators expect only minimal changes and therefore they do not see a need to hire more staff.

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<sup>111</sup> See also conclusions NEA 2008 study on Administrative and Regulatory Barriers in the field of IWT, 2008.



The enlarged reference period provides for more flexibility for the employers when organising the work plans including the possibility for workers to work quite long hours in periods of (seasonal) peaks. Given that the touristic season is often limited to a part of the year, such seasonality is an important issue for employers and employees and also in the freight sector there are times when shipping is more difficult, e.g. in times of draughts or of floods and in case of strong ice. These times require overtime working during other periods so to allow for a relatively steady income for both workers and operators. Although the provisions of the agreement per se will only constitute minimum standards, it is expected that many Member States will adapt to this reference period. In that sense the agreement is expected to have a harmonising effect on the legislation in the sector.

The special provision allowing a maximum average working week of up to 72 hours over a period of four or more months constitutes an extremely heavy work load which, if it was continued over longer periods, would lead to mental exhaustion and therefore needs to be compensated by sufficiently long continuous rest periods. This is in particular an issue for the shipboard personnel on board of passenger ships, whose work continues irrespective of whether the ship sails or not. However, both trade unions and employers agreed on these long working hours in peak times as minimum standards. The normal limit to weekly working time (maximum 48 hours per week on average over 12 months) continues to apply, and this ensures that a period of very heavy seasonal working time would automatically have to be compensated by working correspondingly shorter average hours during the rest of the same year. The main advantage here is also that all workers on board ships would be covered by a consistent level of minimum protection, on whichever European waterway the ship sails.

Given the long working hours which continue to be possible and the temptation of a constant availability of the worker on board, it is important to define rest periods in a way which allows the employee to recreate. For such purposes certain minima of uninterrupted breaks are indispensable. The provisions in that respect are in line with the provisions of the CCNR. These – or more protective rules – are already in application for most ships on European inland waterways. Therefore the provisions on rest times are not expected to have a significant impact on the sector.

#### *5.1.3. Impact of the provisions on night work*

According to the agreement night time is defined as the time between 23.00-6.00. This will provide a consistent definition of night time on all European waterways, thus avoiding misunderstandings when ships cross borders or sail on rivers which border countries with different regimes.

The maximum of 42 hours of night work per week is new for some Member States. However, when the CCNR exploitation regimes A1 and A2 are applicable, ships have to stop sailing between 22.00 and 6.00 and between 23.00 and 5.00. Under these conditions, it requires a high volume of work on the resting ship to reach the threshold. Under the exploitation scheme B, which allows for continuous sailing, it is possible to reach the threshold. However, the manning requirements for these ships are made in a way to allow an organisation which does not necessitate such long hours of night work for any of the crew members.

Therefore, whenever the CCNR (or similar) rules apply such as in Croatia, the Netherlands and Romania, the new situation should not impose restrictions as compared to the baseline. This was a particular concern of the social partners during the negotiations and they considered this as achieved.

This means - beyond the harmonisation of what is considered night time – that these changes will not have an impact on sailing on Rhine and Danube and connected waterways. Given that these are the biggest inland waterways, where night-travel is most likely, it can be concluded that these new provisions have mainly a harmonising effect.

#### 5.1.4. *Impact of a general right to health checks*

For workers in the maritime sector and for mobile night workers free health checks are already a well-established practice<sup>112</sup> in most Member States. Staff dealing with food is in most countries obliged to participate in regular health checks.

The main extension for all Member States as compared to the status quo is that navigation crew and shipboard personnel who are not night workers and who are not dealing with food, will also be entitled to annual health checks. This would benefit shift workers, as shift work also has implications for the health and safety of workers<sup>113</sup>.

Subsequently it can be expected that probably more than 50% of the mobile workers of the mobile workers within the EU (more than 15,500 mobile workers) do already have a right or even the obligation to undergo such health checks. In case of the navigation personnel the rhythm might not follow an annual schedule.

The costs of these health checks are estimated at a 50 euro fee for the medical service and a similar sum to compensate for lost working time, in case the test is performed during the working time. This - however – is not fixed in the agreement. That means the costs/employee are 50-100 euro. Assuming that now every year only a third of the mobile workers, who have the right to these checks, undergo such checks, this would mean maximum costs of about 1-2 million euro for the sector under the conditions that all workers<sup>114</sup> entitled will actually make use of this right and that the national health system is not going to support this initiative. Such support could be justified because preventive intervention is found to reduce general social security costs in the long run. Looking at the Member States with largest labour force in IWT (see Annex 2), this would mean maximum costs between 275,000 euro and 100,000 euro a year for the sector in these Member States provided that all workers entitled will actually make use of this right and that the national health system is not going to support this initiative<sup>115</sup>.

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<sup>112</sup> See Clause 13(1) of the Annex to Directive 1999/63/EC on the working time of seafarers. Directive 1999/63/EEC has been amended by Annex A to Directive 2009/13/EC implementing the Maritime Labour Convention, 2006, which entered into force on 20 August 2013. Clause 13(15) of this Directive provides also for free annual health checks for night workers.

<sup>113</sup> Deloitte 2010: Annex to the Study to support an Impact Assessment on further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation.

<sup>114</sup> Ecorys study estimates that there are 31,700 mobile workers within the EU.

<sup>115</sup> Based on these estimates, for the Netherlands with the largest number of IWT mobile workers, the costs would estimate on 275,000 euro a year, for France the costs would be estimated on 100,000 euro a year.

Investment in active prevention policies to protect the health of their workers leads to tangible results. Health checks are seen as particularly useful in a situation with an increasing average age of the sectoral workforce. They allow treating diseases early and avoiding or reducing absence from the workplace and subsequently also costs of treatment<sup>116</sup>. Compared to an annual turnover for the sector of 7.5 billion euro additional costs of 2 million euro cannot be considered a substantial increase.

#### 5.1.5. *Impact of the introduced obligation to allow for verification*

Registration of working time is usual practice in particular in situations with changing shifts. In 12 of the Member States with IWT, such requirements already exist. In the other 7 Member States<sup>117</sup>, there is no formal legal obligation to do so, however, social partner agreements or company level regulations might already require the mobile workers to do so. Furthermore the Member States<sup>118</sup> who implemented their national legislation based on the Rhine Regulation and the like are already required to register rest time. That means the main change introduced by this obligation will be a more consistent reporting

A simple registration of the working time should not require more than a few seconds each time. This will add up to a few minutes per week and to less than an hour per month. Subsequently, in cases where there was so far no registration, it might mean a few hours of working time per year and employee. A rather high estimation would probably be 10 hours per year. Assuming a personnel cost of 20-30 euro per hour, the additional costs would be 300 euro per year, per employee. The number of mobile workers who will have to register their working time for the first time is very difficult to estimate given the heterogeneity of current situations, it can however be assumed to be rather small.

Navigation personnel in general has to keep record of sailing and rest times so to demonstrate compliance with the provisions for the safety of operations, and bigger shipping companies are likely to pay their personnel according to working hours, so registration can be expected to be part of daily practice. In these cases, the costs can only result from an adaptation of how registration is done. At the moment a discussion at EU level is taking place to come to a uniform documentation of service time on board. The development of an e-format service record book to register service/navigating time is being researched in the context of PLATINA II. If such a model e-format would be used or adapted to register working time as well, such a document could further reduce the costs of keeping and controlling of service time and working time<sup>119</sup>.

The benefits of the new regime at EU level are a significantly facilitated monitoring of compliance. Under the new regime enforcement bodies can expect to obtain similar information in a comparable way on each ship. All ships will have them for all mobile workers within the EU.

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<sup>116</sup> Communication of the Commission: Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work, COM (2007) 62 final.

<sup>117</sup> BE, HR, HU, NL, RO, IT, PL

<sup>118</sup> BE, HR, NL, RO

<sup>119</sup> <http://www.naiades.info/platina/page.php?id=22>. PLATINA II (2013 - 2016) is a European Coordination Action aimed at the implementation of the NAIADES II policy package "Towards quality inland waterway transport". PLATINA II translates the contents of the Action Programme into practice.

## 5.2. Socio-economic impacts of the agreement

While the Ecorys study started with the intention to develop a cost-benefit analysis of the new agreement, entering into the substance it became clear that the complexity of the status quo which consists of sector-specific national legislation and general national legislation, which implements the EU legislation on working time and international agreements on sailing times and the subtlety of the changes required when implementing the Agreement do not allow for this instrument to be used in a serious way. Therefore a qualitative analysis of the socio-economic advantages and disadvantages is provided.

### 5.2.1. Economic impacts

In the present situation, differences in the regulations between different Member States in the Rhine and the Danube region lead to competitive advantages for the operators from the countries which have less protective working time rules and/or rules which are not enforced. This view was confirmed by operators interviewed in the context of the Ecorys study. For tidal rivers, the agreement provides for the flexibility needed as the duration of voyages depends on the tide.

The agreement will limit competition on working time, as it will set common definitions and minimum numerical limits on working time for vessels operating within the territory of the EU Member States. Member States which have less favourable provisions than the agreement will have to adapt their legislation to the agreement. The agreement also establishes common methods for registration and verification of working time at EU level. The registration should be jointly endorsed by employers and employees. This will enable an efficient checking of working time by the enforcement authorities, which at the same time would not pose an administrative burden on the operators<sup>120</sup>. This could improve competitiveness as working time can be more efficiently enforced

Operators in the Netherlands and Romania interviewed in the context of the Ecorys study indicated that they see no major impact on competitiveness, due to the fact that in practice working time of mobile workers is within the limits as provided for in the agreement. In the Netherlands and Romania operators estimate that the agreement, if strictly enforced across the EU, will improve competitiveness since in their experience operators in other countries operate longer working hours.

The agreement will have the most impact on countries that currently have less favourable provisions in their national legislation, such as Croatia, Hungary, the Netherlands, and Romania or do not have any numerical limits on working time for mobile workers in inland waterways (Italy, Luxembourg<sup>121</sup>, Poland). However, for Italy the impact will be limited, as the country does not have any cross border inland waterways and the length of the inland waterways does suggest that working time is within the limits because of the nature of the inland waterway.

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<sup>120</sup> Letter sent by EBU, ESO and ETF to the Commission concerning the agreement on 16 March 2012.

<sup>121</sup> Luxembourg: The national labour code excludes the IWT sector from the applicability of regulations on working time. According to information received from the authorities collective agreements are concluded at company level and available to the government.

For countries in which most shipping will have to comply with the Rhine Regulation and the like, such as the Netherlands and Luxemburg, it is expected that the agreement will only lead to minor changes to the current legislation and practice. With regard to verification the agreement will have an impact on several countries which have different methods to register working time (Belgium, Croatia, Hungary, Netherlands Romania, Italy and Poland<sup>122</sup>). However, Belgium, Croatia, Netherlands and Romania, which have national legislation in accordance with the Rhine Regulation and the like, are already obliged to register the rest time of navigation crew.

The analysis does neither suggest that the provisions on working time in the agreement would complicate the existing acquis, nor that the agreement in any other way discriminates against enterprises newly entering the market. On the contrary, clear minimum standards might in the long run increase transparency of the rules and thereby even facilitate market entrance.

#### 5.2.2. *Impacts on SMEs*

Most of the enterprises in the sector are SMEs or micro-enterprises and most mobile workers are employed in such enterprises, especially in the Rhine region where the proportion of small enterprises is higher than in the Danube region. SMEs are well represented in the sectoral social dialogue by ESO and their representatives were amongst the strongest supporters of the agreement, as they see it as an opportunity to achieve harmonisation with potentially simpler rules on working time in the sector and a more efficient enforcement which will have a positive effect on competitiveness as it limits the possibility to compete on working times.

Actually, the majority of small or even micro-enterprises will be less affected by the new provisions as they own the ships which run on the Rhine and Danube under the exploitation schemes A1 and A2<sup>123</sup>. These schemes require them already to have certain rest periods. For such ships excessive night work is less likely than under a 24 hours exploitation regime.

#### 5.2.3. *Social impacts*

In the present situation the difference in regulations between Member States and the lack of flexibility of the rules lead to difference in the implementation of the rules and in working hours for mobile workers. Having more consistent rules in line with the work schedules in the sector will facilitate implementation and enforcement of the rules. The agreement should also lead to an improvement of working conditions for mobile workers in those Member States<sup>124</sup> which have no or less favourable provisions on working time compared to the agreement.

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<sup>122</sup> HR, NL, RO According to the Rhine Regulations and alike, these countries are already obliged to register the rest time of navigation crew.

<sup>123</sup> According to the Rhine Regulations and the like a vessel operating in A1 schedule means that the vessel is operated max 14 hours/day continuously; In A 2 schedule the vessel is operated max 18 hours/day continuously)

<sup>124</sup> Croatia, Hungary, Italy, Luxembourg , Poland, the Netherlands, and Romania

The inclusion of all mobile workers, i.e. crew and shipboard personnel in the agreement, will lead to equal limits on working hours for the two aforementioned categories of mobile workers. As most Member States<sup>125</sup> already apply working time provisions to both crew and shipboard personnel, no major impact is expected. As some reports indicate excessive working hours for shipboard personnel on passenger vessels, the agreement will have some positive impact on the working conditions of shipboard personnel<sup>126</sup>.

Health checks applicable to all mobile workers are expected to have a positive impact on the health and safety of those mobile workers, which currently do not undergo regular health checks. Some positive impact is to be expected in the Netherlands and Finland, where health checks take place to monitor the suitability for the function on board. United Kingdom and Poland have regular health checks only for night workers. Preventative health checks will also be to the benefit of the sector as a whole and in so far also to the companies<sup>127</sup>.

Maximum working time and minimum rest time provisions will have some positive impact in Member States which do not have these limits in their national legislation, such as Luxembourg Poland and Italy. As most Member States already have regulations which are equal or more protective than the limits in the agreement, no substantial improvement is to be expected. In Croatia, Netherlands and Romania, which apply the CCNR (or similar) regulations, and therefore have some limits on rest time, some slight improvement might be expected on limits on working time. However, according to the operators interviewed in practice the work schedules are already in line with the limits provided for in the agreement.

#### 5.2.4. *Implementation and costs*

In the context of the Ecorys study, representatives of enforcement bodies and representatives of the social partners in the EU Member States were asked if according to their opinion the time spent by enforcement officers on the verification of working and rest hours of mobile workers would change due to provisions in the agreement.

Most responses stated that in their view the time spent by enforcement officers would not change. Some respondents stated that the provisions of the agreement would lead to an amendment to current regulations that can be integrated in the labour code (United Kingdom, Czech Republic). In Belgium, Bulgaria, Finland and Hungary respondents indicated that the current national legislation on working time is similar to the provisions of the agreement. Since the legal arrangement of working time does not change fundamentally, the impact on the time spent to verify adherence should not change much either.

The responses to the national questionnaires indicated that, for the Netherlands, Italy and Germany, the agreement sets rules which are different from the present ones. As a consequence, the verification process will need to be adapted.

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<sup>125</sup> With the exception of Netherlands, Romania and Croatia, whose national legislation is based on the Rhine regulation and the like.

<sup>126</sup> Ibid footnote 94.

<sup>127</sup> European Commission 2011: Socio-economic costs of accidents at work and work-related ill health.

Respondents from those countries indicate fear that compliance with the new rules will imply higher costs. However, respondents in the Netherlands and Germany agreed that a common level of protection on all European inland waterways could lead to more efficiency in enforcement. This was also the view from respondents in Luxembourg and Romania.

According to the Dutch employers' organisation, the requirement to keep records at the level of individual workers would require only limited administrative changes. The Dutch employers' organisation even expects a slightly positive effect from the provisions concerning verification of working and rest times in the agreement as these provide more clarity about the applicable regulations.

In most countries the government does not foresee to invest more in the enforcement of the legal obligations. The Ministry of Employment in Luxembourg stated that enforcement will be more effective because the agreement provides clearer rules compared to the national legislation. The Dutch Ministry of Transport believed that effectiveness will not change, because documents that are used to verify if rules have been adhered to, will not change. However, the higher consistency of records could help enforcement bodies to control more ships with the same resources.

## 6. COMPARISON OF THE OPTIONS

On the basis of the analysis carried out in the previous section, both options have been assessed and compared against their contribution to reach the specific objectives and the costs of their implementation.

<b>Specific objective</b>	<b>Baseline</b>	<b>Agreement</b>	<b>Assessment of the change from baseline to agreement</b>
<b>Flexibility to balance between periods of high and low work load</b>	The reference period over which the average weekly working time is calculated as transposed in national rules, is in most cases relatively short, leading to a limited flexibility	By facilitating the extension of the reference period over which the average weekly working time can be computed (up to 12 months), the sector gains a lot of flexibility. This flexibility is consolidated by a quite high maximum number of working hours for shorter periods (up to 14 hours/day, 84 hours/week in any week and 72 hours/week over longer periods)	very positive
<b>Minimum health and safety</b>	Crew members on most inland waterways protected either by specific working	The agreement covers all mobile workers. It does not distinguish between navigation personnel and	positive

<p><b>protection for all mobile workers in the sector</b></p>	<p>time legislation, by provisions on security of operations and/or by social partner agreements.</p> <p>However, in several instances it is not clear which rules should actually be applied. Subsequently protection is unclear and may be lacking especially for shipboard personnel.</p>	<p>shipboard personnel.</p> <p>All mobile workers have a right to free regular health checks. This may entail immediate costs but preventative action may lead to reduced absenteeism and sickness insurance.</p> <p>With the maximum limit to average weekly working time, even though this is calculated over a whole year, the protection of mobile workers in IWT is aligned with the protection provided by the general Working Time Directive.</p> <p>The possibility to work for rather long periods (four months) average 72 hours per week allows working somewhat excessive hours in the short term. However social partners agree in considering this suited to some specifically seasonal working patterns. However such workers are still covered by the overall limit, so they will be entitled to work correspondingly shorter hours until their average (calculated over 12 months) comes down to a maximum of 48 hours. This provides a protection of workers against excessive situation.</p>	
<p><b>Facilitate enforcement of working time rules, in particular in cross-border situation.</b></p>	<p>A patchwork of sometimes contradicting rules (e.g. different definitions of night time, focus on rests vs. focus on working hours different criteria for identification of applicable legislation), makes it difficult for in particular small operators to really know which rules they have to comply with in every</p>	<p>Harmonised definition of night time, reference period and standard obligations for reporting will facilitate the implementation of rules.</p> <p>The clear definition, of which rules (geographical position of the ship) apply will facilitate compliance and enforcement.</p>	<p>Very positive</p>



	<p>moment.</p> <p>Subsequently also enforcement is difficult for the enforcement bodies.</p>		
<b>Costs of implementing the agreement</b>	<p>Many rules are not systematically enforced. Thus costs of implementation are kept to a minimum. This coincides with a perception that compliance is not considered important.</p>	<p>Operators do not expect a significant increase of costs when implementing the agreement.</p> <p>However, there may be costs to be expected:</p> <p>Continuously:</p> <p>a) more systematic registration of working time in some cases</p> <p>One-off:</p> <p>b) introducing changes to the system of working time registration</p> <p>c) familiarisation with the new rules and how they are to be understood.</p> <p>d) adaptation of the national legislation to the requirements of the agreement</p> <p>I.e. the permanent costs seem to be limited and in direct relation with the intentions of the initiative. The one-off costs can be considered as not excessively high as the sector is motivated to accept the new legislation, which should also facilitate the implementation for Member States, so that the legal changes can in the long run be expected to be paid back with better compliance.</p>	<p>Increase but willingness to spend money on it might also increase</p>

Summarising the table it can be concluded that the agreement makes a step forward to achieve the objectives set and does so at overall reasonable costs. Therefore the Commission considers the agreement as an appropriate way forward.

## 7. EVALUATION AND MONITORING

Without prejudice to the provisions of the agreement on the follow-up and review by the signatories, the European Commission shall monitor the implementation of the directive.

The following data will be examined:

1. Rate of compliance with working time provisions in the agreement;

Once the directive implementing the agreement in EU law is adopted, the Member States are obliged to transpose the directive into their national legislation. The national enforcement authorities will then be responsible for the enforcement of the national legislation. On the basis of the data provided by national enforcement authorities in annual reports<sup>128</sup>, the European Commission can monitor if there is a better compliance with working time provisions at national level. This will be an indication that the working time provisions provide flexibility for the operators to balance high and low workloads.

2. Identification of trends, in particular

- a) reduction of accidents in the sector;

- b) reduction of health problems and a higher satisfaction of workers with their working, while taking other aspects such as the increased average aging of the sector into account;

These aspects can be monitored in a qualitative way during the ongoing discussion with Member States and the European social partners. Data will be available based on information of the different stakeholders, such as national authorities, in particular enforcement authorities and social partners. In addition the signatories of the agreement will monitor and review the agreement in the context of the sectoral social dialogue committee for inland waterway transport.

The agreement would be evaluated by the Commission services five years after the date of its entry into force. The evaluation will be based on data gathered from the monitoring exercise, complemented by the results of the monitoring and of the review by the signatories of the agreement as well as information collected from Member States and other stakeholders.

In order to evaluate the results and the impact of the agreement some evaluation questions should be addressed:

1. What have been the impacts on the main stakeholders in the sector? In particular the following aspects should be analysed:

- a. did the control on working time provisions become more efficient, in particular in cross-border situations, in terms of time needed for the control;

- b. the compliance rate within the sector in terms number of non-compliant ships, correct registration of working time on board of ships;

- c. the number of accidents within the sector;

- d. satisfaction of mobile workers with the working conditions in the sector;

2. Are there any issues with regard to working time for mobile workers in inland waterway which still need to be addressed?

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<sup>128</sup> National enforcement authorities prepare annual reports on a voluntary basis according to their national practice.

## 8. ANNEXES

### **Annex 1: Overview consultations and involvement from social partners and stakeholders**

Negotiations between the social partners at EU level, EBU, ESO and ETF started in January 2008. Given the fact that these three organisations do not have affiliates in all EU Member States and for the sake of transparency on their negotiation process, they sent, in November 2009, a joint letter to the national authorities (ministries of employment and of transport) of the then 27 Member States informing them of the core content of their negotiations and asking them to forward the information to the respective national social partner organisations. It appears that this letter met no official response.

In the context of the Ecorys study, information on national was collected through a questionnaire that was sent to the ministries of employment and transport of the then 27 EU Member States and Croatia. The text of the Agreement was annexed to this questionnaire. Most questions were related to the current national legislation on working time in the IWT sector. Furthermore questions were asked on the possibilities to include provisions on working time in collective agreements. Questions were asked on the enforcement of this national legislation<sup>129</sup>. Replies were received from the national authorities of all EU Member States.

The national authorities were also asked whether they perceived legal obstacles to implementing this Agreement in national law or regulations. Eleven Member States indicated that this question was not relevant for them without any further specification<sup>130</sup>. Ten Member States and Croatia replied that they perceived no legal obstacles<sup>131</sup>. Hungary indicated that the legal obstacles were still unknown at this point. The French authorities indicated that according to their first analysis the national legislation contained more favourable standards. They stressed that EU legislation should permit Member States to keep more favourable national provisions. The German authorities indicated that they would need further information on the provisions in the Agreement on working and rest days, as they had some questions on the interpretation. Austria and Lithuania indicated that some national provisions were more favourable than the Agreement. The United Kingdom questioned if the agreement contained enough flexibility for working on tidal rivers and found the standards regarding health assessment for mobile workers more stringent than for seafarers. Luxembourg indicated some concerns on weekly rest and annual leave, but did not provide any further information on these points.

A questionnaire asking about collective agreements in the sector was sent to the social partners in the EU Member States and Croatia. According to the information received from the social partners, in 15 Member States<sup>132</sup> it is possible to include some provisions on working time in collective agreements within the limits set by the

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<sup>129</sup> See Annex 3 of the Ecorys Study for the questionnaires used in the context of this study.

<sup>130</sup> CY, DK, EL, ES, FI, IE, LV, MT, PT, SI and SE.

<sup>131</sup> BE, BG, DE, EE, HR, IT, NL, PL, RO, SK.

<sup>132</sup> AT, BE, DE, EE, FI, FR, HU, HR, IT, LT, LU, NL, RO, SE, SK.

national legislation. In some Member States<sup>133</sup> it is not possible to derogate from the provisions on working time set by national legislation through collective agreements. These collective agreements are mostly concluded at sectoral level. In Luxemburg and Italy social partners commented that collective agreements were concluded rather at company level than at sectoral level. Swedish social partners indicated that sectoral collective agreements regulate working time on harbour tug boats and in domestic travel to the archipelagos and on passenger ferries, but the latter two agreements apply to maritime travel only<sup>134</sup>.

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<sup>133</sup> BG, CZ, HR, PL, RO and UK.

<sup>134</sup> Ecorys study

## Annex 2: Economic and Employment data on the inland waterway transport sector

**Table 1 Number of enterprises per country in the IWT sector (freight and passenger) in 2010**

Country	Number of enterprises	Country	Number of enterprises
Netherlands	4,259	Portugal	41
France	1,023	Slovenia	33
Germany	970	Bulgaria	32
Italy	926	Denmark	18
Poland	535	Lithuania	15
Sweden	487	Croatia	13
Belgium	304	Latvia	12
United Kingdom	246	<i>Slovakia</i>	8
Romania	166	Estonia	1
<i>Luxembourg</i>	132	Cyprus	0
Hungary	108	Greece	0
Czech Republic	95	Ireland	0
Austria	82	Malta	0
Finland	76	<b>Total</b>	<b>9,645</b>
Spain	63	<i>Numbers in 'italic' are based on estimations.</i>	

Source: Ecorys study: PANTEIA based on EUROSTAT; DESTATIS (Germany) and University of Vienna (Austria).

**Table 2 Estimated number of mobile workers and self-employed in 2011<sup>135</sup>**

Countries (EU-28)	Freight			Passenger			Total IWT employment	% Mobile workers <sup>136</sup>
	Self-employed	Mobile workers	Total freight	Self-employed	Mobile workers	Total passenger		
Netherlands*	4,908	5,912	10,820	731	2,357	3,088	13,908	27%
Germany*****	577	2,197	2,774	288	2,527	2,815	5,589	15%
France*	577	1,096	1,673	60	1,967	2,027	3,700	10%
Luxembourg**	180	2,375	2,555	18	238	256	2,811	8%

<sup>135</sup> The total number of persons employed in the IWT sector is – based on provisional data - given for 2011 (unless otherwise specified) . Nevertheless, information on the distinction between mobile workers versus self-employed is not yet available. It has been estimated based on the shares in EUROSTAT from 2010 or national statistics/literature review.

<sup>136</sup> Compared to total estimated number of mobile workers in EU-28.

Countries (EU-28)	Freight			Passenger			Total IWT employment	% Mobile workers <sup>136</sup>
	Self-employed	Mobile workers	Total freight	Self-employed	Mobile workers	Total passenger		
Italy*	231	403	634	993	926	1,919	2,553	4%
Belgium*	1,294	557	1,851	326	222	548	2,399	3%
Romania*	14	2,067	2,081	18	230	248	2,329	7%
Bulgaria*/***	22	957	979	6	694	700	1,679	5%
Sweden*	14	104	118	191	792	983	1,101	3%
United Kingdom*	60	239	299	162	590	752	1,051	3%
Hungary*	9	258	267	25	575	600	867	3%
Portugal**	0	0	0	13	840	853	853	3%
Czech Republic*	42	474	517	58	225	283	800	2%
Poland*	98	215	313	103	200	303	616	1%
Slovakia*	1	412	413	0	31	31	444	1%
Spain*	6	38	44	20	324	344	388	1%
Finland*	1	38	39	28	200	228	267	1%
Austria*	1	50	51	57	100	157	208	0%
Lithuania*	0	0	0	4	141	145	145	0%
Denmark*/**	6	42	48	12	83	95	143	0%
Croatia*/**	7	114	121	6	5	12	133	0%
Latvia*	0	89	89	0	17	17	106	0%
Estonia**	0	0	0	1	60	61	61	0%
Slovenia*	24	16	40	13	8	21	61	0%
Ireland	0	0	0	0	0	0	0	0%
Greece	0	0	0	0	0	0	0	0%
Cyprus	0	0	0	0	0	0	0	0%
Malta	0	0	0	0	0	0	0	0%
Latvia*	0	89	89	0	17	17	106	0%
<b>Total</b>	<b>8,072</b>	<b>17,654</b>	<b>25,726</b>	<b>3,134</b>	<b>13,353</b>	<b>16,486</b>	<b>42,212</b>	<b>100%</b>
<b>Of which mobile workers</b>							<b>31,007</b>	<b>73%</b>

Countries (EU-28)	Freight			Passenger			Total IWT employment	% Mobile workers <sup>136</sup>
	Self-employed	Mobile workers	Total freight	Self-employed	Mobile workers	Total passenger		
							<b>11,206</b>	<b>27%</b>
						<b>Of which self-employed</b>		

\* Based on division between mobile workers and self-employed given by EUROSTAT for 2010 or most recent year.

\*\* Based on number of enterprises in 2010 (or most recent information) and the average number of self-employed and average number of workers per enterprise.

\*\*\* Based on survey carried out in 2013 under Ministries, trade unions and employers' organisations in EU-28.

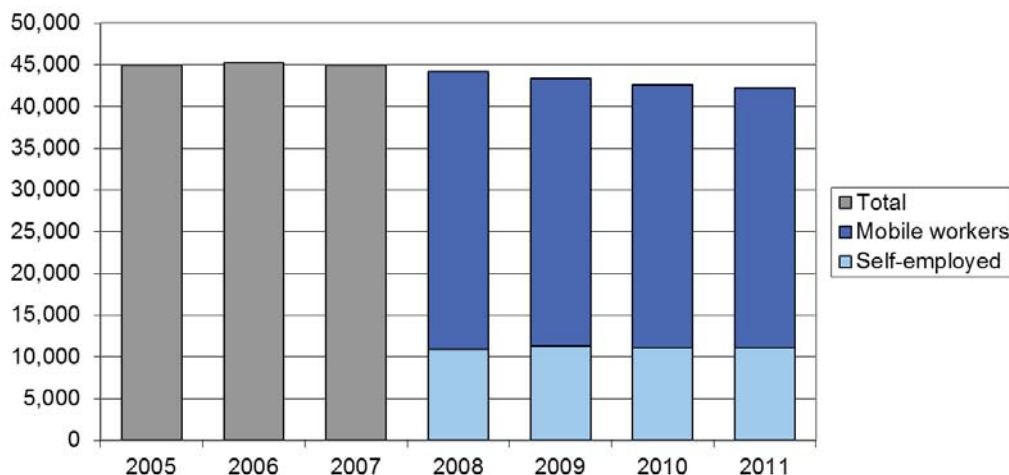
\*\*\*\* Based on share freight and passenger vessel within the IVR ship registration for the year 2011.

\*\*\*\*\* Based on available statistics for 2011.

Source: Ecorys study.

The number of self-employed has increased slightly since 2008 from 25% to 27%. A large number of new vessels have been built since 2008. Given the financial situation after the economic crisis, many vessel owner/operators themselves have become more active in the actual navigation of the vessel in order to reduce labour costs for hired nautical staff to cope with the reduced revenues. About 40% of the total employment in the IWT sector in Europe is linked with passenger transport. In Germany, this share reaches almost 51% of the shipboard personnel (excluding shore-based personnel)<sup>137</sup>.

Figure: Development of the total mobile IWT employment from 2005 to 2011 in EU-28, broken down by mobile workers and self-employed from 2008 to 2011<sup>138</sup>



<sup>137</sup> Central Commission for Navigation on the Rhine: Inland navigation Europe, Market Observation 2013.  
<sup>138</sup> EUROSTAT does not provide data before 2008, with the distinction to be able to estimate the self-employed and the mobile workers. The shares presented from 2008 until 2011 have been estimated based on the numbers of the countries where this information is known.

*Source: EUROSTAT; Belgium (source: RSVZ, ITB, RSZ); Germany (source: DESTATIS); Poland Central Statistical Office Poland); survey carried out in 2013 under Ministries, trade unions and employers' organisations (Austria; Luxembourg and Bulgaria).*

## **Age distribution**

The attractiveness of the IWT sector is a common concern of the employers and trade unions, especially given the aging problem in the IWT sector. Significant differences exist in the age distributions of mobile workers and the self-employed. The aging problem is seen more clearly for the self-employed compared to the mobile workers. In general, mobile workers tend to be younger than the self-employed. In the inland navigation sector, the self-employed are usually also the boat masters. To become a boat master more experience is required compared to other IWT functions. The self-employed also stay longer in the IWT sector compared to the mobile workers, even after they turn 65 years.

The ageing problem in the IWT sector is particularly evident in Belgium (70% of the mobile workers is aged 45 years and older) and Germany (58% is aged 43 years and older). Based on the questionnaire in the Ecorys study among national authorities, the problem is similar in Bulgaria (45% of the mobile workers is aged 45 years and older) and Hungary (67% is 45 years and older). On the other hand the percentage of young mobile workers is low in all these countries: 9% is younger than 25 in Belgium, 5% is younger than 23 in Belgium, and 11% is younger than 25 in both Bulgaria and Hungary. On the other hand, ageing is not a problem in France and the Netherlands.

Thus, although partly due to the crisis there are currently no labour shortages in the sector, the age distribution gives a further indication that attractiveness of the sector for new workers may become more of an issue in the medium term.

## **Nationality**

The friction in the labour market in Western Europe has partially been resolved by hiring crew members from Central and Eastern European Member States and non-EU countries (e.g. Philippine nationals).

In the Netherlands, 13.6% of the mobile workers are foreigners (value for the year 2008). The share of other EU nationals is 6.7% and 6.8% for third country nationals. The largest share of foreign mobile workers is by far from the Philippines, followed by Poles, Germans, Romanians and Czechs. Besides mobile workers from the Philippines there are almost no other non-EU countries of relevance. During the last years, the number of non-EU foreign workers in the Netherlands has increased steadily. Nevertheless, this percentage of non-EU mobile workers in the Netherlands is much lower now. In 2012, the Employee Insurance Agency (UWV) announced that it will become more difficult to obtain working permits for workers from outside the European Economic Area (EEA). The requirement for employers of looking first for employees from the Netherlands or other EU countries will be applied more strictly. Based on the survey carried out for the Ecorys study, the employers' organisations in the Netherlands reported a share of 1% of third country mobile workers compared to 26% of mobile workers originating from other EU Member States.

About 27.3% of the workers in Belgium are EU nationals and 0.01% is third country nationals. All the IWT employment in Luxembourg comes from other EU countries.



Only for Germany, year-to-year information is available on the share of non-nationals working in the IWT sector. Germany reported a total share of 22.9% of foreigners in 2010, of which: 20.6% EU nationals (mostly from Poland, Czech Republic and Romania) and 2.3% third country nationals (mobile) workers (mostly from Turkey, Ukraine and Philippines). In 2011, this share of foreign mobile workers increased to 23.4%.

Around 10% of the foreign workers in Slovakia are from other EU countries and 3% are third country nationals.

The share of foreign workers in Bulgaria is: 1% originates from other EU countries and 2% are third country nationals.

From the information presented above it can be concluded that between 20 to 30 per cent of the workers in Western European countries such as Belgium, Germany and the Netherlands are foreign nationals of which the majority from other EU Member States. At most a few per cent of foreign citizens are working in countries such as Bulgaria and Hungary.

### **Economic situation in the sector**

The overall economic situation within the EU has also affected the inland waterway transport sector. In the 28 EU Member States, a total of 483 million tonnes were transported on inland waterways in 2011. Despite a high in 2010, Inland waterway transport volumes in 2011 were still below the levels of 2008.

Transport levels in differ between Member States and rivers within a Member States. For example the growth rate of the Rhine is 1.5 %. Areas in which slightly stronger growth rates occurred were the upper Danube area (+8 %), the river Main and the Main-Danube Canal (+8 % and +17 % respectively), the middle Danube area (Hungary +12.5%) and parts of the lower Danube (Bulgaria +13 %).

Areas experiencing a fall in demand for transportation were Belgium (-5 %), the Moselle and Rhone in France (-7 % and -9 % respectively), Luxembourg (-5 %), and northern and north-western German area (Ruhr -5 %, Mittellandkanal -3 %). Demand for transportation stagnated on the Elbe and Moselle in Germany and on the Seine in France.

A difference in growth can also be signalled in the different segments of inland waterway transport. For example the transport of chemical products is currently growing. A process of stagnation is expected to take root for mineral oil products, in view of the reduced oil price, but also a further structural reduction in quantities used. Overall - thanks to chemical products - an increase in transport volumes (of around 2 % up to a maximum of 5 %) is expected in the tanker shipping sector in 2014<sup>139</sup>.

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<sup>139</sup> Central Commission for Navigation on the Rhine, Market Observation 2013.

### Annex 3: Detailed comparison between the Status Quo and the agreement

#### Box 1: Scope and applicability

Agreement	Directive 2003/88/EC	Member States	International agreements
<p>The agreement applies to mobile workers in IWT. It applies to both freight and passenger transport and contains specific provisions for seasonal work on passenger vessels. It applies to both crew members and shipboard personnel (such as hotel and catering workers on board of passenger ships).</p> <p>It does not apply to persons operating vessels for their own account (owner-operators).</p>	<p>The Working Time Directive defines mobile workers in more general terms as any worker employed as a member of a travelling or flying personnel by an undertaking which operates transport services for passengers and goods by road, air, or inland waterway transport. It does not make the distinction between the crew members and other shipboard personnel. It also does not contain any special regime for seasonal work on passenger vessels.</p> <p>It does not apply to self-employed.</p>	<p>In HR, NL, RO minimum rest time is applicable to all persons in nautical functions. Shipboard personnel are not covered by these regulations for inland waterway in these three Member States.</p> <p>Self-employed are included in BG, HR, HU, IT and NL.</p>	<p>Central Commission for the Navigation on the Rhine. (CCNR): rest time regulations apply to both navigation personnel and self-employed (owner operators). Regulations do not apply to shipboard personnel. The Danube Commission has provided recommendations identical to the CCNR rules</p>
<p>The agreement applies to mobile workers on board a craft operated within the territory of a Member State in the commercial IWT sector.</p>	<p>Directive 2003/88/EC applies to all workers and to all sectors. It allows some special rules as regards mobile workers.</p>	<p>Flag of the ship: EE, FI, HU, IT, LT, RO, SE</p> <p>Geographical position of the ship BE, HR, DE, NL, PL UK</p> <p>Seat of the operator BE, LT, LU</p> <p>Other AT, BG, FI, FR,</p>	<p>CCNR rules apply to ships on the Rhine in the five CCNR Member States: BE, DE, FR, NL, and Switzerland.</p> <p>The Danube Commission can issue recommendations</p>

		<p>SK</p> <p>Unknown: CZ</p> <p>In the context of national collective agreements additional criteria such as the nationality of the worker (FR) or the employer (HU) or both is used (BG)</p>	<p>to its Member States AT, BG, HR, DE, HU, RO, SK Moldova, Russian Federation, Serbia and Ukraine.</p>
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**Box 2: Working time, rest and reference period**

Agreement	Directive 2003/88/EC	Member States	International agreements
<p><b>Daily limits to working time</b></p> <p>Working time is based on an 8 hour day (paragraph 3).</p> <p>Working time shall not exceed 14 hours in any 24-hour period (paragraph 4(1)).</p>	<p>The Directive does not set any limit to daily working time.</p>	<p>All Member States have more than 8 hours a day as a maximum:</p> <p>13 MS have 14 hours or less<sup>140</sup>.</p> <p>HU has more than 14 hours<sup>141</sup>.</p> <p>NL<sup>142</sup> and RO<sup>143</sup> working time regulations are based on the CCNR regulations and alike<sup>144</sup> which only prescribe minimum rest requirements for continuous travel in the context of safety rules.</p> <p>UK: only average weekly working time limits of 48 hours.</p> <p>PL and IT do not seem to have any regulations in this area.</p>	<p>CCNR rules and alike do not prescribe limits to daily working time, but instead minimum rest requirements for continuous travel on the Rhine.</p>
<p><b>Limit to weekly working time</b></p> <p>In all cases, an average of 48 hours a week within <b>12 months shall not be exceeded</b> (paragraph</p>	<p>Article 6 requires that the average weekly working time, including overtime, does not</p>	<p>With the exception of FI (50 hours), most Member States have an average of 48 hours or less a week in their national legislation.</p>	

<sup>140</sup> AT, BE, BG, CZ, DE, EE, FI, FR, HR, LT, LU, RO, SE SK.

<sup>141</sup> HU (12 hours plus 4 hours availability).

<sup>142</sup> In interviews done in the context of the Ecorys study, Dutch operators stated that although national legislation in principle allows for more than 14 hours daily working time, in practice operators apply less than 14 hours, although it depends on the sailing schedule applied.

<sup>143</sup> Romanian operators interviewed in the context of the Ecorys study also seem to indicate that in practice the daily working day is less than 14 hours.

<sup>144</sup> CCNR rules or the recommendations of the Danube Commission which are similar.

<p>3(2). Hence, the maximum amount of working time within 12 months is 2304 hours (48 hours x 52 weeks minus four weeks of annual leave)</p> <p>In addition, working time shall not exceed 84 hours in any seven day period (paragraph 4(1))</p>	<p>exceed 48 hours. Derogations are possible, in limited situations under Article 17(1) or Article 22.</p> <p>To be calculated by taking the average over a 'reference period': (Article 16(b)).</p> <p>Normally, the reference period <b>is not to exceed four months</b>; but it may be <b>extended</b> (by law or by collective agreements) to not more than <b>six months</b> in certain activities, and <b>(by collective bargaining only)</b>, to not more than twelve months in any activity.</p>	<p>Reference periods vary between<sup>145</sup>:</p> <p>3 months and 12 months<sup>146</sup></p> <p>4 months<sup>147</sup></p> <p>≥4months to 12 months<sup>148</sup></p> <p>12 months/ 1 year<sup>149</sup></p>	
<p><b>Special provision allowing longer average weekly working time over a limited period</b></p> <p>If, according to the work schedule, there are more working days than rest days, an average weekly working time of 72 hours shall not be exceeded over a four-month period.</p>	<p>No equivalent provision.</p>	<p>No equivalent in national law on the ratio working/rest days or a limit on days worked consecutively.</p>	

<sup>145</sup> The reference periods provided by national law are sometimes calculated in weeks instead of months. As the Working Time Directive contains different derogations which allow extending reference periods from a maximum of 4 to a maximum of 12 months, the Member States have also different reference periods, under certain conditions. Detailed information is available in the Ecorys study.

<sup>146</sup> BE, FR.

<sup>147</sup> DE, EE, LT, PL, NL, RO, SK.

<sup>148</sup> AT, BG, CZ, IT, UK.

<sup>149</sup> HR, HU, SE.

<p><b>Minimum daily and weekly rest periods</b></p> <p>Rest periods shall not be less than 10 hours in each 24-hour period, of which at least six hours are uninterrupted, and 84 hours in any seven-day period.</p>	<p>The specific provisions on daily and weekly rest (Articles 3, 4, 5 of the Directive) do not apply to mobile workers according to article 20. However Member States must ensure that all such workers are entitled to 'adequate rest' as defined by Article 2(9) including ensuring that they have regular rest periods defined in units of time.</p>	<p>HR, NL and RO implemented CNRR rules and alike.</p> <p>13 Member States have a limit on daily working time of 14 hours or less in any 24 hours, so rest periods should be 10 hours or more.</p> <p>HU has more than 14 hours of working time, so the rest time will be less than 10 hours.</p> <p>PL and IT, have not any regulations in this area.</p> <p>UK has an average weekly working time of 48 hours.</p>	<p>Depending on the sailing schedule of the vessel:</p> <p>rest periods are 8 hours uninterrupted in each 24 hours or 8 hours rest of which 6 hours uninterrupted per 24 hour period</p> <p>or</p> <p>24 hours rest per 48 hours of which twice 6 hours uninterrupted rest.</p>
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HU: maximum 12 hours of work plus 4 hours of availability;  
 HR, NL, RO: same as in the Rhine Agreement;  
 BG: The Ordinance for labour and immediately associated relations between the crew and ship owner (226/2003) specifies that the captain is required to take all measures to avoid or minimize overtime of the crew. Crew members have the right to refuse overtime except in emergencies (§25 and 26).  
 Collective agreement: 720 hours per 3 months divided by 13 weeks = 55.  
 DE: AZG = Working Time Act (Arbeitszeitgesetz); collective agreement: 40 hours per week for navigational staff and 38 hours per week for non-navigational staff (e.g. catering);  
 EE: standard average working week is 48 hours. An average of 52 hours per week is possible if the agreement is not unreasonably harmful to the employee and the employee can cancel the agreement at any time by giving two weeks' notice;  
 FR: Depending on shift work, classical transport and passenger transport;  
 HR: max 32 hours overtime in a month, in addition max 180 hours overtime in a year, regular working time = 40 hours per week;

HU: 2000 hours per year, for the sake of comparison divided this by 48 weeks; According to paragraph 3(3) of the Agreement, the maximum working time in a 12 month period is 2 304 hours.  
 LU: The labour code excludes the IWT sector from the applicability of regulations on working time. According to information received from the authorities collective agreements are concluded at company level and available to the government, and according to the ministry of employment the usual working time agreed is 40 hours per week. Daily working time in various collective agreements is 8 hours + 2 hours on-call time.

### Box 3: Night Work

Agreement	Directive 2003/88/EC	Member States	International agreements
<p><b>Night time:</b> the time between <u>23:00 and 06:00</u>;</p>	<p><b>Night time:</b> Article 2(3): ‘any period of <u>not less than seven hours</u>, as defined by national law, and which must include, in any case, the period between <u>midnight and 5.00</u>;’</p>	<p>9 Member States<sup>150</sup> define night time as: 22-06 hours. AT and FR define as: 22-05 hours. SE and UK define as: midnight to 5.00 hours. BE defines as: 20.00-6.00 hours. In NL an employment contract can specify night time as 22-06 hours or 23-7 hours. FI 17.00-7.00 hours(freight transport) 19.00-6.00 hours (passenger transport) PL: 21.00-7.00 hours IT: not regulated. In EE not defined.</p>	<p>If the ship is sailing maximum 14 hours, within 24 hours the sailing has to be interrupted for 8 hours between 22.00-6.00 If the ship is sailing a maximum of 18 hours within 24 hours, sailing has to be interrupted for 6 hours between 23.00-5.00 Ships that are sailing 24 hours do not have a specific period to interrupt their sailing.</p>
<p><b>Limit to night work</b> Paragraph 9: Based on a night time of seven hours, the maximum weekly working time during</p>	<p>Not regulated for mobile workers.</p>	<p>HR, CZ, HU, PL<sup>151</sup>, SK<sup>152</sup>: night work ≤ 8 hours. SE: 9 hours. AT and LU: ≤ 10 hours.</p>	

<sup>150</sup> BG, CZ, CR, DE, HU, LT LU, RO, SK.

<sup>151</sup> PL: if night work is dangerous.

<sup>152</sup> SK: reference period of 6 months.

<p>night time shall be 42 hours per seven day period.</p>		<p>BE 50 or 56 working time in any week for night workers.</p> <p>BG, DE, FI, IT, LT, NL, RO, UK: no limit on night work.</p> <p>EE undefined.</p>	
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*Source: Ecorys study*



#### Box 4: Verification

Agreement	Directive 2003/88/EC	Member States	International agreements
<p>According to paragraph 12 of the agreement, operators are required to keep records of working and rest time of each individual crew member on board of the vessel.</p> <p>These records shall be kept on board until at least the end of the reference period.</p> <p>3. The records shall be examined and endorsed at appropriate intervals (no later than by the end of the following month) jointly by the employer or employer's representative and by the worker.</p>	<p>No similar provisions</p>	<p>Verification at company level by 10 Member States<sup>153</sup>.</p> <p>Documents on rest time per employee 10 Member States<sup>154</sup>.</p> <p>Verification on the basis of the ship's logbook, 5 Member States<sup>155</sup></p> <p>BE, IT, SK also inspect company rules on working and rest times in addition to the other documents.</p> <p>BE interviews workers on working and rest time in addition of other methods.</p> <p>PL indicates no verification takes place.</p> <p>CZ and SE: unknown.</p>	<p>CCNR: Article 3.13 of the Regulations for Rhine navigation personnel:</p> <p>- schedule A1, A2 daily registration of the rest time of each crew member in the ship's logbook.</p> <p>- schedule B: the shifts of each crew members have to be registered in the logbook.</p>

<sup>153</sup> AT, DE, FI, FR, HR, IT, LT LU, NL SK.  
<sup>154</sup> AT, BG, DE, EE, FI, FR, IT, LT, SK, UK.  
<sup>155</sup> BE, HU, NL RO SK.

**Box 5: Protection of minors**

Agreement	Directive 94/33/EC	Member States	International agreements
<p>1. Workers under the age of 18 shall be covered by Directive 94/33/EC on the protection of young people at work.</p> <p>2. By way of exception, Member States may in national legislation authorise work by young people over the age of 16, who are no longer subject to compulsory fulltime schooling under national law, during the period in which night work is prohibited if this is necessary in order to achieve the objective of are recognised training course and provided that they are allowed suitable compensatory rest time and that the objectives set out in Article 1 of Directive 94/33/EC are not called into question.</p>	<p>Article 3 ( c) ‘adolescent’ shall mean any young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law;</p> <p>Night work for adolescents is forbidden in any case between midnight and 4.00. An exception might be made for work in the shipping sector on objective grounds.</p>	<p>FR and LT: prohibit night work for minors.</p> <p>BG, FI, NL, and SE: only allowed if night work is part of the training.</p> <p>HR: no night work allowed. If night work is considered essential and it is temporary: night work for minors is limited to 8 hours and no work between midnight and 04.00 hours.</p> <p>DE: collective agreements regulate that persons aged 17 may work until 22.00 hours.</p> <p>HU and LU: limited to 8 hours work per day and 40 hrs. per week, no specific legislation for night work.</p> <p>AT, BE, CZ, IT, PL, SK, UK: no specific information available.</p>	

