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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	7 July 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 452 final
Subject:	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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Delegations will find attached document COM(2014) 452 final.

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Encl.: COM(2014) 452 final



EUROPEAN  
COMMISSION

Brussels, 7.7.2014  
COM(2014) 452 final

2014/0212 (NLE)

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**

(Text with EEA relevance)

{SWD(2014) 226 final}

{SWD(2014) 227 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Purpose

At their own initiative the sectoral social partners in inland waterway transport at EU level (the European Barge Union, the European Skippers Organisation and the European Transport Workers' Federation) negotiated an agreement on certain aspects of the organisation of working time in inland waterway transport (IWT) in accordance with Article 155(1) of the Treaty on the Functioning of the European Union (TFEU). They took the view that Directive 2003/88/EC<sup>1</sup> (the Working Time Directive) did not meet the sector's needs.

Negotiations took place between January 2008 and November 2011. The European Agreement concerning certain aspects of the organisation of working time in inland waterway transport (the Agreement) was concluded on 15 February 2012. The signatories presented the Agreement to the European Commission and asked for it to be implemented by a Council decision on a proposal from the Commission, in accordance with Article 155(2) TFEU.

#### 1.2. Existing provisions relating to the proposal

The working time of mobile workers in IWT in the EU is regulated by Directive 2003/88/EC, which lays down common minimum standards for the organisation of working time as regards daily and weekly rest periods, numerical limits to weekly working time, annual leave and night work, in the interests of workers' health and safety at work.

The activities of mobile workers in various transport sectors, including inland waterways, were originally excluded from the scope of the 1993 Working Time Directive<sup>2</sup>. They were brought within its scope by an amending Directive in 2000, with effect from 1 August 2003<sup>3</sup>. At that stage, however, it was not possible to reach agreement on bringing all such workers within the scope of the Directive's general rules on minimum daily and weekly rest periods or on limits to night work, due to the distinctive working conditions and particular features of their activities. It was therefore provided<sup>4</sup> that Member States must take the necessary measures to ensure that such workers are entitled to 'adequate rest'<sup>5</sup>, without quantifying this.

Article 14 of the Working Time Directive<sup>6</sup> nonetheless permits other EU instruments to lay down more specific working time requirements for particular occupations or activities. This proposal now provides for such requirements for mobile transport workers in IWT. The Agreement concluded by the IWT social partners takes account of the Working Time

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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.

<sup>2</sup> Article 1(3) of Directive 93/104/EC concerning certain aspects of the organisation of working time, OJ L 307, 13.12.1993, p. 18 ('the 1993 Directive').

<sup>3</sup> Article 1(1) of 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, OJ L 195, 1.8.2000, p. 41 ('the 2000 Directive').

<sup>4</sup> See recitals 3 to 11 of the 2000 Directive, and Article 17a as inserted by the 2000 Directive (corresponding to Article 20 of the Working Time Directive).

<sup>5</sup> As defined by Article 2(9) of the Working Time Directive.

<sup>6</sup> Article 14 of Directive 2003/88/EC corresponds to Article 14 of the 1993 Directive; for interpretation, see *Bowden v Tufnalls Parcels Express*, Case C-133/00, judgment dated 4 October 2001.

Directive and proposes various specific requirements in line with the specific features of the sector regarding, in particular the reference period. Furthermore, it provides for a minimum number of hours of rest daily and weekly and maximum hours of night work to address the specific working conditions and particular features of the sector. The Agreement applies to both navigation personnel (crew members) and shipboard personnel, covers commercial freight and passenger transport and contains specific provisions for seasonal work on passenger vessels. It does not apply to persons operating vessels on their own account (owner-operators).

### 1.3. General context

In the 28 EU Member States, some 42 200 people work directly in IWT, of whom 31 000 are mobile workers (73%)<sup>7</sup>. Approximately 9 650 companies operate in the IWT sector. The western part of Europe is dominated by small companies owning/operating one vessel. On the Danube, by contrast, single-vessel barge owners are the exception. In total, there are over 16 000 vessels in Europe (dry goods shipping, tanker shipping, tugboats and pusher boats). Over 75 % of IWT within the EU is cross-border transport<sup>8</sup>.

On a yearly basis, the EU inland waterways network accounts for 140 billion tonne-kilometres of freight transport. The network consists of about 37 000 km of inland waterways; rivers, lakes and canals, in 20 Member States. IWT is a quiet, energy-efficient way of transporting goods. It plays a key role in the logistics of bringing goods from Europe's seaports to their final destination. Its energy consumption per tonne-kilometre of transported goods is approximately 17 % that of road transport and 50 % that of rail transport<sup>9</sup>.

The absence of EU rules on numerical limits on the number of hours worked daily, weekly and at night by mobile workers in IWT opened the way to a wide variety of national rules which created difficulties for transport companies and did not ensure sufficient protection for workers in all cases. Most mobile workers in IWT have irregular work patterns compared to workers on shore. As they live and work on board of the vessel and are mostly spending rest periods on board. They are longer periods away from home. Vessels operate normally 14 hours a day, 5 or six days a week, sometimes continuously 24 hours a day. Periods of high workload are followed by periods of rest and periods of low workload. Average working time in the IWT sector usually includes a considerable amount of inactive time (for example unplanned waiting time at locks or during the loading and unloading of the craft), which may also occur at night. Sometimes voyages may take longer than planned due to external circumstances, such as the tide on tidal rivers and the weather conditions.

This is also true for hotel personnel working in the inland waterway river cruise industry. A typical river cruise ship with 150 passengers has a crew of six to eight and about another 30 employees in the hotel department<sup>10</sup>. As the passenger navigation season lasts around eight months, hotel staff is away from home for a very long time.

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<sup>7</sup> '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', Ecorys, 2013 .

<sup>8</sup> Commission communication *Towards quality inland waterway transport — NAIADES II*, COM(2013) 623 final.

<sup>9</sup> [http://ec.europa.eu/transport/modes/inland/index\\_en.htm](http://ec.europa.eu/transport/modes/inland/index_en.htm).

<sup>10</sup> Market Observation No 12 — Analysis of the economic situation — Autumn 2010, CCNR. [http://www.ccr-zkr.org/files/documents/om/om10II\\_en.pdf](http://www.ccr-zkr.org/files/documents/om/om10II_en.pdf).

‘Market Observation No 12 — Analysis of the economic situation — autumn 2010’<sup>11</sup>, carried out on behalf of the European Commission, describes the situation of hotel staff as follows:

*‘There are currently no collective wage agreements for hotel personnel on river cruise ships so that wages are negotiated individually. As the passenger navigation season lasts around eight months, staff are away from home for a very long time so that the annual leave is essentially spent at home in the winter after the season is over. Employees in this segment often have to put up with very long working days and being accommodated for protracted periods in very small cabins with up to three roommates is also not an easy undertaking.’*

#### **1.4. Consistency with other policies and objectives of the Union**

The EU has committed itself to pursuing the goal of shifting transport to less energy-intensive, cleaner and safer transport modes. Together with rail and short sea shipping, inland waterway transport can substantially contribute to the sustainability of the transport system. In the mid-term progress report on the implementation of the Integrated European Action Programme for Inland Waterway Transport (NAIADES)<sup>12</sup>, the Commission restated the importance of social dialogue in the sector and acknowledged the social partners’ negotiations on working time as one of the main components of the ‘Jobs and Skills’ chapter of NAIADES<sup>13</sup>.

In September 2013, the European Commission adopted the NAIADES II package, which covers the period 2014-2020<sup>14</sup>. The NAIADES II package includes a communication setting out a programme for action in the following areas: quality infrastructure; quality through innovation; smooth functioning of the market; environmental quality through low emissions; the integration of inland navigation into the multimodal logistics chain; and a skilled workforce and quality jobs.

Furthermore, improving the quality of work and working conditions, and in particular reviewing the existing legislation and providing for a smarter EU legal framework for employment and health and safety at work, are key actions within the context of *“An Agenda for new skills and jobs: A European contribution to full employment”*<sup>15</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>16</sup> to create a genuine Single European Transport Area by eliminating all barriers between national systems. A higher degree of convergence and enforcement of social and other standards is an integral part of this strategy.

In particular, the Commission staff working document accompanying the White Paper further specifies that:

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<sup>11</sup> Ibid.

<sup>12</sup> Commission communication on the promotion of inland waterway transport ‘NAIADES’ — integrated European action programme for inland waterway transport, COM(2006) 6 final.

<sup>13</sup> SEC(2011) 453 final.

<sup>14</sup> Commission communication *Towards Quality Inland Waterway Transport Naiades II*, COM(2013) 623 final.

<sup>15</sup> Commission communication *An Agenda for new skills and jobs: A European contribution towards full employment*, COM(2010) 682 final.

<sup>16</sup> *Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system*, COM(2011) 144 final.

*‘Social partners are working on recommendations for improved working and living conditions on-board of vessels, on specific working time arrangements, on EU job profiles and manning requirements and the establishment of minimum standards for training and education as well as on recommendations against social dumping and unfair competition in the inland waterway transport sector.’*

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND ANALYTICAL DOCUMENT**

### **2.1. Consultation of stakeholders**

Article 155(1) TFEU provides for the social partners at EU level to enter into contractual relations, including agreements, if they want to. The TFEU does not require them to consult other parties beforehand.

As the European Agreement concerning certain aspects of the organisation of working time in IWT was concluded at the social partners’ own initiative, the Commission needs to assess the appropriateness of EU action in the area.

Commission staff prepared an analytical document which accompanies this proposal in line with the guidelines on impact assessment<sup>17</sup>. It provides a proportionate analysis which assesses the socio-economic impact of implementing the Agreement. In the external study of the costs and benefits of implementing the Agreement<sup>18</sup>, the consultants identified the relevant authorities and social partners in all Member States and asked for information on the national legislation on working time in the IWT sector and the potential impact they expect from implementing the Agreement.

### **2.2. Analytical Document**

The signatories of the Agreement presented it to the European Commission and asked for it to be implemented by a Council decision on a proposal from the Commission, in accordance with Article 155(2) TFEU.

If management and labour jointly request implementation of their agreement by Council decision on a proposal of the Commission in accordance with 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 ask 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.

Therefore, the Commission has only two options to consider:

**1. Not to propose implementation of the Agreement by a Council decision in accordance with Article 155(2) 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.

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<sup>17</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>18</sup> 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, Ecorys, 2013.

The baseline is very much characterised by the national legislation and the safety regulations which are in place in accordance with international agreements such as the Regulations for Rhine navigation personnel<sup>19</sup> and the like<sup>20</sup>. Hence, national legislation differs and will continue to do so in this sector of predominantly cross-border activity. No limits *expressed in units of time* on minimum daily rest, weekly rest, breaks and maximum length of night work are provided for at EU level. Furthermore, the scope of national legislation in the different Member States varies. In some Member States, the legislation only applies to navigation personnel, and in some cases to the self-employed, but not to the shipboard personnel. In other Member States, working time legislation for the sector applies to both navigation and shipboard personnel.

**2. To propose implementation of the Agreement by a Council decision in accordance with Article 155(2) TFEU:** Directive 2003/88/EC on working time and Directive 94/33/EC on the protection of young people at work will be complemented by a Directive providing more specific rules on binding and common definitions concerning the organisation of working time in IWT.

The Agreement concerns the following areas: limits on daily and average weekly working time *expressed in units of time*, the reference period, annual leave, the 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 at night, special provisions regarding working time for workers aged under 18, compliance checks ('verifications'), emergency situations, health assessment and the right to transfer for night workers, safety and health protection and patterns of work.

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 who are navigation personnel and shipboard personnel. In line with limits set out in the TFEU, the social partners have not agreed on provisions on working time for self-employed persons.

The Agreement contains a rule on applying the 'more favourable provisions' (paragraph 17(1)). This means that where national legislation or collective agreements currently contain more protective provisions, nothing must change as a consequence of implementing the Agreement.

This proposal is in line with the conclusions of the Analytical Document in terms of the ranking of the policy options.

The impact of this initiative on SMEs, essentially small and micro-enterprises is limited. Small businesses make up a large proportion of the sector. The number of small businesses is proportionally higher in the Rhine Region than in the Danube Region. They are mainly owner-operators, operating vessels on their own account. The Agreement does not apply to owner-operators.

During negotiations on the Agreement, SMEs were well represented by the ESO and their representatives were among the strongest supporters of the Agreement, as they see it as an

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<sup>19</sup> <http://www.ccr-zkr.org/13020500-en.html#04>.

<sup>20</sup> The recommendations of the Danube Commission are identical to the Regulations for Rhine navigation personnel.

opportunity to achieve harmonisation with potentially simpler rules on working time in the sector.

SMEs that fall under the Agreement because they employ mobile workers will mostly be among the less affected. They own ships that run on the Rhine and Danube under exploitation schemes A1 and A2<sup>21</sup>, which already require certain rest periods (under provisions concerning the safety of shipping).

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

Article 155(2) TFEU provides that *‘Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed’*.

The Agreement concluded by the EBU, ESO and ETF concerns certain aspects of the organisation of working time in inland waterway transport. It refers to working conditions and contains provisions on the health and safety of workers, an area which is governed by Article 153(1)(a) TFEU. This is one of the fields in which the Council can decide by a qualified majority. Article 155(2) therefore constitutes the proper legal basis for the Commission’s proposal.

In its Communication *Adapting and promoting the social dialogue at Community level*<sup>22</sup>, the Commission emphasised that *‘before any legislative proposal is presented to the Council, the Commission carries out an assessment involving consideration of the representative status of the contracting parties, their mandate and the legality of each clause in the collective agreement in relation to Community law, and the provisions regarding small and medium-sized enterprises’*.

This assessment is given below.

#### **3.2 Analysis of the Agreement**

##### *3.2.1 Representativeness of the contracting parties and their mandate*

The legitimacy of the social partners to be consulted and to be given the right to negotiate agreements likely to be implemented by Council decision is based on their representativeness.

The signatories to the Agreement are the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers’ Federation (ETF). These three organisations are the members of the Inland Waterway Transport Sectoral Dialogue

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<sup>21</sup> According to the Rhine Regulations a vessel operating in A1 schedule means that the vessel is operated max 14 hours/day continuously; Schedule A2 means that the vessel is operated max 18 hours/day continuously)

<sup>22</sup> Communication from the Commission adapting and promoting the social dialogue at Community level, COM(1998) 322 final.



Committee set up in accordance with the Commission Decision of 20 May 1998<sup>23</sup> on the establishment of Sectoral Dialogue Committees promoting dialogue between the social partners at European level. The Commission regularly assesses the representativeness of social partners participating in European social dialogue with the help of external studies. The last representativeness study for IWT carried out by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), a tripartite body, was published in 2010<sup>24</sup>.

The information provided by the signatories confirms that they belong to a specific sector and that they are organised at European level. Moreover, they are made up of organisations which are themselves an integral and recognised part of the Member States' social partner structures and have the capacity to negotiate agreements, and they are representative of a number of Member States. Finally, they have the structures required to enable them to participate effectively in the work of the Sectoral Dialogue Committee.

The Agreement signed by these organisations covers certain aspects of the organisation of working time of mobile workers in inland waterway transport. The signatories have forwarded information on their representative status which indicates that they are sufficiently representative of mobile workers in IWT and of their employers, both in freight and passenger transport.

On the employers' side, the EBU<sup>25</sup> represents national inland navigation industry organisations (freight and passenger transport) in eight EU Member States<sup>26</sup> and the ESO<sup>27</sup> represents private inland shipping entrepreneurs (self-employed skippers) in five Member States<sup>28</sup>. Put together, these two organisations have affiliates in nine Member States. The representativeness study confirmed 'the importance of EBU and ESO as the unmatched European voices of business in the sector, even though both associations have only part of the EU Member States under their umbrella through affiliations from these countries'.

On the trade union side, the Agreement was signed by the ETF<sup>29</sup>, whose inland waterways section brings together trade union officers and representatives of national transport trade unions defending the interests of workers in the sector (freight and passenger transport, in particular hotel and cruise ships). The ETF represents IWT workers' organisations in 17 Member States<sup>30</sup>; most of these organisations are involved in collective bargaining at national level.

Given that the EBU, ESO and ETF do not have affiliates in all EU Member States, to make the negotiation process transparent they sent a joint letter to the transport and labour ministries of all Member States in November 2009 informing them of the core content of their

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<sup>23</sup> Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level, OJ L 225, 12.8.1998, p. 27.

<sup>24</sup> European Foundation for the Improvement of Living and Working Conditions (2010), Representativeness of the European social partner organisations: Inland waterway transport (<http://www.eurofound.europa.eu/eiro/studies/tn0809017s/tn0809017s.htm>).

<sup>25</sup> <http://www.ebu-uenf.org/membership>.

<sup>26</sup> Belgium, the Czech Republic, Germany, France, Luxembourg, the Netherlands, Austria, and Romania.

<sup>27</sup> <http://www.eso-oeb.org/organisations>.

<sup>28</sup> Belgium, Germany, France, the Netherlands and Poland.

<sup>29</sup> <http://www.itfglobal.org/etf/etf-affiliates.cfm>.

<sup>30</sup> Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Spain, France, Italy, Latvia, Luxembourg, the Netherlands, Austria, Poland, Portugal, Romania, Finland and the United Kingdom.

negotiations and asking them to forward the information to the relevant national social partner organisations. It appears there was no official response to this letter.

The representativeness study carried out by Eurofound did not identify any other sectoral social partner organisation organised at European level.

The Commission therefore concludes that the EBU, ESO and ETF are the only EU-wide organisations representative of both sides of industry in IWT.

In a letter to the Commission dated 16 March 2012, the signatories to the Agreement confirmed that they had a mandate from their national affiliates to negotiate and conclude the Agreement.

In conclusion, the signatories to the Agreement have sufficient representative status with regard to IWT in general and to the workers and employers who may be covered by the Agreement's provisions, and they have had a mandate from their national members to negotiate and conclude the Agreement.

### *3.2.2 Legality of clauses of the Agreement*

The Commission has scrutinised each clause of the Agreement and has not found any to be contrary to EU law.

The obligations which would be imposed on the Member States do not arise directly from the Agreement between the social partners: rather, they would result from its implementation by means of a Council decision.

The content of the Agreement remains within the fields listed in Article 153(1) TFEU.

Paragraph 17 of the Agreement contains a non-regression clause, which safeguards the existing level of protection of workers. In addition, the necessary safeguards of the *acquis* are included in the proposal for a Council Directive (more favourable provisions and non-regression — see Article 2).

### **3.3 Subsidiarity and proportionality**

The subsidiarity principle applies insofar as the proposal does not fall under the EU's exclusive competence.

The proposal provides 'more specific provisions' within the meaning 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 proposal can only be achieved at EU level.

The need for EU action is also justified by the fact that inland waterway transport is largely an international form of transport consisting primarily of cross-border activity on the European inland waterway transport network. In order to prevent unfair competition caused by large differences between working time rules in different Member States, it is necessary to establish minimum standards at EU level regarding working time in this sector.

Reflecting this necessity, the social partners, in accordance with Article 155(1) TFEU, have concluded an agreement at EU level and have asked for this Agreement to be implemented by

a Council decision on a proposal from the Commission pursuant to Article 155(2) TFEU. Specific requirements of this kind have already been laid down by various directives for mobile transport workers in civil aviation<sup>31</sup>, in cross-border rail services<sup>32</sup> and for seafarers<sup>33</sup>, based on European Agreements concluded by the social partners for the sectors concerned.

The proposal therefore complies with the subsidiarity principle.

The proposed Directive fulfils the requirement for proportionality because it is confined to setting the aims to be achieved and it lays down minimum standards.

It therefore leaves room for flexibility as regards the choice of concrete measures of implementation.

### **3.4 Choice of instruments**

The instrument chosen is a Directive. The term ‘decision’ in Article 155(1) TFEU is used in its general meaning in order to enable the legislative instrument to be selected in accordance with Article 288 TFEU. It is up to the Commission to propose the most appropriate of the three binding instruments referred to in that article (a regulation, directive or decision).

Article 296 TFEU states that *‘where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.’*

In this instance, given the type and content of the social partners’ agreement, it is clear that it is best applied through provisions to be transposed by the Member States and/or the social partners into the Member States’ national law. The most suitable instrument is therefore a Council Directive.

The Commission also considers that the Agreement should not be incorporated in but annexed to the proposal.

### **3.5 Information to the European Parliament**

Under Article 155(2) TFEU, if a European Agreement is implemented by means of a Council decision, the European Parliament must be informed.

The Commission has forwarded its proposal to the European Parliament so that it can, if it wishes, communicate its opinion to the Commission and the Council.

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<sup>31</sup> Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers’ Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (Text with EEA relevance) — OJ L 302, 1.12.2000, p. 57–60.

<sup>32</sup> Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers’ Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector — OJ L 195, 27.7.2005, p. 15–17.

<sup>33</sup> Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners’ Association (ECSA) and the Federation of Transport Workers’ Unions in the European Union (FST) — Annex: European Agreement on the organisation of working time of seafarers — OJ L 167, 2.7.1999, p. 33–37.

### **3.6 Content of the proposal**

The structure of the proposal is as follows:

#### *Article 1*

This article is confined to making the Agreement between the social partners binding, which is the aim of a Council decision adopted under Article 155(2) TFEU.

#### *Article 2*

Article 2 states that the Directive provides only for minimum requirements, leaving the Member States free to adopt measures which are more favourable to workers in the area concerned. Its aim is to explicitly guarantee acquired levels of protection of workers and ensure that only the more favourable standards of occupational protection apply.

#### *Articles 3 to 6*

Articles 3 to 6 contain the usual provisions on transposition into the Member States' national law, including the obligation to provide for effective, proportionate and dissuasive penalties. In particular, Article 5 refers to the date of entry into force of the Directive.

### **3.7 Detailed explanation of the provisions of the Annex to the proposal**

#### *Paragraph 1 (Scope)*

This clause makes it clear that the Agreement applies to mobile workers employed as crew members and shipboard personnel on a craft operated in the commercial inland waterway sector. Paragraph 1(2) stipulates that owner operators are not covered by the Agreement, even if they are considered as workers in their own enterprise for social security reasons.

Paragraph 1(3) establishes the relation between this Agreement and national and international provisions on rest time for the purposes of shipping safety. If there are differences between these provisions, the provisions most favourable to the health and safety of workers are applied.

Paragraph 1(4) stipulates that mobile workers working on a craft within the territory of an EU Member State outside the commercial inland waterway sector and whose working conditions are governed by a collective labour agreement can be covered by this Agreement under certain conditions.

#### *Paragraph 2 (Definitions)*

The Agreement employs various terms: craft, passenger vessel, working time, rest time, rest day, inland waterway transport operator, work schedule, night time, night worker, shift worker, shipboard personnel, mobile worker and season. Paragraph 2 sets out the meanings of these terms for the purpose of this Agreement.

#### *Paragraph 3 (Working time and reference period)*

Paragraph 3(1) establishes a standard daily working time of eight hours. Paragraph 3(2) provides for an average weekly working time of 48 hours in line with Article 6 of the Working Time Directive.

Paragraph 3(2) stipulates that the maximum reference period is 12 months. The reference period is the period over which the average weekly working time is calculated.

Paragraph 3(3) therefore states that the maximum working time is 2 304 hours. Annual leave and sick leave are excluded from this calculation. If the employment relationship is less than the reference period, the maximum permissible working time is calculated pro rata.

#### *Paragraph 4 (Daily and weekly working time)*

Paragraph 4(1) lays down a maximum working time during any 24-hour period and the maximum working time during any seven-day period.

Paragraph 4(2) introduces a limit to average weekly working time of 72 hours within any four-month period in case of a specified work schedule. This provision takes into account the existing work schedules in the sector and the considerable amount of inactive time spent on board.

#### *Paragraph 5 (Working days and rest days)*

Working patterns in the IWT sector vary. In many cases mobile workers work consecutive days on a craft in order to spend a period of rest at home. Paragraph 5(1) lays down the maximum limit: no more than 31 days can be worked consecutively.

Paragraph 5(2) provides regulations for a 1:1 pattern, where a worker has the same number of rest days and working days. In this pattern, a number of consecutive working days are followed by the same number of rest days. There are exceptions possible to this rule under the conditions mentioned.

Paragraph 5(3) establishes a method for calculating the minimum number of consecutive rest days if the working pattern involves more working days than rest days. These rest days must be granted immediately after the consecutive working days.

#### *Paragraph 6 (Seasonal work on passenger vessels)*

In order to recognise the special nature of seasonal work on passenger vessels, paragraph 6 lays down maximum limits on working time: 12 hours in any 24-hour period and 72 hours in any seven-day period, which may be applied to all mobile workers on passenger vessels.

Paragraph 6(2) requires workers to be granted 0.2 rest days per working day. At least two rest days must be granted during any period of 31 days.

Paragraph 6(3) stipulates that rest days must be granted and the average maximum of 48 hours weekly working time must be adhered to in accordance with collective agreements or, failing that, by national legislation.

#### *Paragraph 7 (Rest periods)*

In order to protect workers' health and safety, this paragraph establishes rest periods expressed in units of time: 10 hours in every 24-hour period and 84 hours in any seven-day period.

#### *Paragraph 8 (breaks)*

Paragraph 8 gives every worker whose daily working time exceeds 6 hours the right to a break. The duration and terms under which breaks are granted is determined by collective agreement or, failing that, by national legislation.

#### *Paragraph 9 (Maximum working time during night time)*

Based on night time of seven hours, this paragraph limits working time during night time to 42 hours per seven-day period.

#### *Paragraph 10 (Annual leave)*

Paragraph 10 establishes a minimum period of annual leave of at least four weeks, which cannot be replaced by a payment in lieu except when the employment relationship is terminated. This paragraph corresponds to Article 7 of the Working Time Directive, which already applies to mobile workers.

#### *Paragraph 11 (Protection of minors)*

Mobile workers in IWT under the age of 18 will continue to be covered by Directive 94/33/EC on the protection of young people at work<sup>34</sup>.

Paragraph 11(2) allows Member States to authorise night work by young people during a period which is forbidden by Directive 94/33/EC, if they are over the age of 16 years and are no longer subject to compulsory full-time schooling according to national legislation. Night work must be necessary for their training and is only allowed if sufficient compensatory rest is granted and the objectives of Article 1 of Directive 94/33/EC are not called into question.

#### *Paragraph 12 (Verifications)*

Paragraph 12(1) stipulates that records must be kept of each workers' daily and weekly working time in order to check compliance with the provisions on working time in this Agreement (paragraphs 3-7, 9-11 and 13).

Paragraph 12(2) requires working time records to be kept on board at least until the end of the reference period.

Paragraph 12(3) states that these records shall be examined and endorsed at regular intervals by both the employer and the worker.

Paragraph 12(4) lays down the minimum information such a record must contain.

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<sup>34</sup> Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, O.J. L 216, 20.8.1994.

Paragraph 12(5) stipulates that workers must be given a copy of his endorsed records and must keep the records with them for one year.

*Paragraph 13 (Emergency situations)*

Paragraph 13(1) stipulates that in emergency situations, the boatmaster or the boatmaster's representative may require the worker to work additional hours necessary for the safety of persons and cargo or the vessel itself or to provide assistance to persons or vessels in distress.

Paragraph 13(2) stipulates that in such a situation the boatmaster or the representative may require the worker to work additional hours until the normal situation is restored.

Paragraph 13(3) imposes an obligation on the boatmaster or the representative to give all workers who have worked during a scheduled rest period adequate compensatory rest, as soon as practicable after the normal situation is restored.

*Paragraph 14 (Health assessment)*

Paragraph 14(1) establishes the right of all workers to an annual health assessment free of charge. During this health assessment particular attention must be paid to conditions and symptoms which could be the result of working on board under the daily minimum rest periods and or minimum rest days in accordance with paragraph 5 and 6 of the Agreement.

Paragraph 14(2) lays down the right of night workers to be transferred to day work if they suffer from health problems connected with night work.

Paragraph 14(3) and 14(4) stipulate that the free annual health assessment must comply with medical confidentiality and may be performed under the national health system.

*Paragraph 15 (Safety and health protection)*

Paragraph 15(1) gives night workers and shift workers the right to safety and health protection appropriate to the nature of their work.

Paragraph 15(2) stipulates that the protection and prevention services or facilities for the health and safety of night and shift workers must be equivalent to those applicable to other workers. These facilities and services must be available at all times. The provisions of paragraph 15 are in line with Article 12 of the Working Time Directive, which already applies to mobile workers.

*Paragraph 16 (Working patterns)*

This paragraph covers situations where the employer wants to organise work according to a certain pattern. In this situation, the principle of adapting the work to the worker must be taken into account, with a view to alleviating working at a monotonous rate or at a predetermined rate, depending on the type of activity and the health and safety rules. This provision is in line with Article 13 of the Working Time Directive, which applies to mobile workers.

#### *Paragraph 17 (Closing provisions)*

This paragraph contains a clause on more favourable provisions: Member States are allowed to maintain or introduce equivalent or more favourable provisions than the Agreement.

Paragraph 17(2) contains a non-regression clause and paragraph 17(3) stipulates that social partners must monitor the implementation and application of the Agreement, in particular regarding occupational health and safety issues, in the context of the European Social Dialogue Committee for IWT.

Paragraph 17(4) provides for a review of the provisions of this agreement by the signatories of the Agreement two years after the end of the transposition period laid down in Article 4 of this proposal.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implications for the EU budget.

#### **5. ADDITIONAL INFORMATION**

The Member States are required to send the Commission the text of national provisions transposing the Directive and a correlation table between those provisions and the Directive.

There is often no specific legislation in the Member States explicitly addressing the categories of workers covered by the Directive. Hence, the national legislation of the Member States concerning matters covered by the proposal is frequently contained in a number of different legislative texts (Labour Codes, health and safety legislation, sector-specific non-exhaustive provisions) which will require a systemic approach and interpretation.

The proposal also contains a number of elements not previously covered because Article 20 of the Working Time Directive exempted them from its general provisions. Unambiguous information on the transposition of these new provisions and solutions is needed to ensure compliance with the minimum standard established by the proposal. It will enable the Commission to ensure the implementation of the Directive's requirements, which are intended to protect workers' health and safety, to provide more flexibility for the undertakings and to foster fair competition between undertakings.

The estimated additional administrative burden of providing explanatory documents is not disproportionate (it is one-off and should not require many organisations to be involved). The explanatory documents can be drafted more efficiently by Member States.

In view of the above, it is suggested that Member States undertake to notify the Commission of their transposition measures by providing one or more documents explaining the relationship between the components of the Directive and the corresponding parts of national transposition instruments.



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**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 155(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Management and labour, hereinafter referred to as 'the social partners', may, in accordance with Article 155(2) of the Treaty on the Functioning of the European Union (TFEU), request jointly that agreements concluded by them at Union level be implemented by a Council decision on a proposal from the Commission.
- (2) The European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) informed the Commission of their desire to enter into negotiations in accordance with Article 155(1) TFEU with a view to concluding an agreement at Union level.
- (3) On 15 February 2012, EBU, ESO and ETF concluded a European Agreement concerning certain aspects of the organisation of working time in inland waterway transport ('the Agreement').
- (4) The Agreement included a joint request that the Commission implement the Agreement by means of a Council decision on a proposal from the Commission in accordance with Article 155(2) of the Treaty.
- (5) For the purposes of Article 288 of the Treaty, the appropriate instrument to implement the Agreement is a Directive.

- (6) The Commission has drafted its proposal for a Directive, in accordance with its Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level<sup>35</sup>, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement.
- (7) Any terms used in the Agreement and which are not specifically defined therein may be defined by Member States in accordance with national law and practice, as is the case for other social policy Directives using similar terms, providing that those definitions respect the content of the Agreement.
- (8) The Member States may entrust social partners, at their joint request, with the implementation of this Directive, as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.
- (9) Directive 2003/88/EC of the European Parliament and of the Council<sup>36</sup> lays down minimum health and safety requirements for the organisation of working time, including that of workers in the inland waterway transport.
- (10) This Directive and the Agreement lay down more specific requirements for the organisation of working time of mobile workers in inland waterway transport, for the purposes of Article 14 of Directive 2003/88/EC.
- (11) The provisions of this Directive should apply without prejudice to any existing Union provisions which are more specific or which grant a higher level of protection to mobile workers in inland waterway transport.
- (12) This Directive cannot be used to justify a reduction in the general level of protection of workers in the fields covered by the Agreement.
- (13) This Directive and the Agreement lay down minimum standards; the Member States and the social partners may maintain or introduce more favourable provisions.
- (14) The Commission has informed the European Parliament pursuant to Article 155(2) TFEU, by sending the text of its proposal for a Directive containing the Agreement.
- (15) This Directive respects the fundamental rights and principles recognised by in the Charter of Fundamental Rights of the European Union and in particular Article 31 thereof.
- (16) Since the objectives of this Directive which is intended to protect health and safety of workers in a predominantly cross border sector cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the European Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on European Union, this Directive does not go beyond what is necessary in order to achieve those objectives.

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<sup>35</sup> COM(1998) 322 final.

<sup>36</sup> OJ L 299, 18.11.2003, pp. 9–19.

- (17) The implementation of the Agreement contributes to achieving the objectives under Article 151 of the TFEU.
- (18) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>37</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

This Directive implements, for the purposes of Article 155(2) of the Treaty on the Functioning of the European Union, the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded on 15 February 2012 by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF), as set out in the Annex.

#### *Article 2*

1. Member States may maintain or introduce more favourable provisions than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and social partners to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are complied with.
3. The application and interpretation of this Directive shall be without prejudice to any Union or national provision, custom or practice providing for more favourable conditions for the workers concerned.

#### *Article 3*

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed. The penalties must be effective, proportionate and dissuasive.

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<sup>37</sup> OJ C 369, 17.12.2011, p. 14.

#### *Article 4*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2016 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 5*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*