



Council of the  
European Union

Brussels, 28 November 2014

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**Interinstitutional File:**  
**2014/0212 (NLE)**

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16031/14  
ADD 1

SOC 829  
EMPL 180  
SAN 451  
TRANS 559

## REPORT

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from: Permanent Representatives Committee (Part 1)  
to: Council (EPSCO)

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No prev.doc.: 15753/14 ADD 1 SOC 802 EMPL 169 SAN 440 TRANS 541  
No. Cion prop.: 11688/14 SOC 558 EMPL 95 SAN 282 TRANS 355 - COM(2014) 452 final

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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  
- *Political agreement*

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Delegations will find attached the text of the proposal following the meeting of the Committee of the Permanent Representatives on 26 November 2014.

The Report can be found in doc. 16031/14.

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) 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>1</sup>, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement.
- (7) In order to contribute to a coherent legal framework with regard to the organisation of working time, the implementation of this Directive should take into account existing Union legislation, and given the content of the Agreement, in particular Directive 2003/88/EC [working time].
- (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>2</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.

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<sup>1</sup> COM(1998) 322 final.

<sup>2</sup> OJ L 299, 18.11.2003, pp. 9–19.

- (11) The provisions of this Directive should apply without prejudice to any (...) 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.
- (17) The implementation of the Agreement contributes to achieving the objectives under Article 151 of the TFEU.

- (17a) According to the settled case-law of the Court, the fact that an activity referred to in a directive does not yet exist in a Member State cannot release that State from its obligation to adopt laws or regulations in order to ensure that all the provisions of the directive are properly transposed. Both the principle of legal certainty and the need to secure the full implementation of directives in law and not only in fact require that all Member States reproduce the rules of the directive concerned within a clear, precise and transparent framework providing for mandatory legal provisions. Such an obligation applies to Member States in order to anticipate any change in the situation existing in them at a given point in time and in order to ensure that all legal persons in the Community, including those in Member States in which a particular activity referred to in a directive does not exist, may know with clarity and precision, what are, in all circumstances, their rights and obligations. According to case-law, it is only where transposition of a directive is pointless for reasons of geography that it is not mandatory. Member States should in such cases inform the Commission of those reasons.
- (18) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>3</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:

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<sup>3</sup> OJ C 369, 17.12.2011, p. 14.

### *Article 1*

This Directive implements 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.

#### *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*