



Council of the
European Union

Brussels, 28 November 2014

16239/14

Interinstitutional File:
2014/0212 (NLE)

SOC 840
EMPL 186
SAN 458
TRANS 568

COVER NOTE

from :	General Secretariat
to :	Delegations
No. Cion prop.:	11688/14 SOC 558 EMPL 95 SAN 282 TRANS 355 - 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

Delegations will find attached the joint answer by the EU-level Social Partners clarifying their intentions at the time of signing the European Agreement.

Brussels, 3 November 2014

To Mr Armindo SILVA
Director European Commission
DG Employment, Social Affairs and Inclusion
Rue Joseph II 54
J544 02/139

B-1049 BRUSSELS

Dear Mr Silva,

The Council preparatory bodies are currently examining the Commissions' proposal for a Council Directive implementing the European Social Partners' Agreement concluded on 15 February 2012 by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) and concerning certain aspects of the organization of working time in Inland Waterway transport (IWT).

On behalf of the European Social Partners EBU, ESO and ETF we would like to provide you with additional background information to clarify and further explain the underlying drivers of the concluded European Social Partners' Agreement. We would ask you to convey this letter to the Chair of the Council Social Questions Working Party.

History of negotiations

First and foremost the present European Social Partners' Agreement has been negotiated in two stages.

During the first stage the carrying principles and basic objectives of the agreement were negotiated. This stage ended in the beginning of 2009 upon which the European Social Partners decided to:

- inform all Member States at that time in writing of the negotiated principles and objectives of the agreement to be, inviting Member States to provide the European Social Partners with their views and/or comments. All national Ministries of Transport, Employment and Social Affairs were addressed in this consultation.
- have a 9-month consultation period in order to provide enough time for them to submit the agreement to their national affiliates. The agreement in principle was brought to the very grass root level of all 3 European Social Partners' organisations, so that all feed back could be taken into account during the next stage.

The European Social Partners received input from various national affiliates and took it into account. No response from the Member States was received. After the consultation period the second stage – the drafting of the text of the agreement – started.

With regard to the questions, we would like to provide you with the following information.

Question 1: During your negotiations, did you take the different characteristics of the different river basins into account?

We took the different characteristics of river basins into account and concluded that neither the characteristics of rivers, canals and lakes nor their hydrological specificities have any impact on the aspect of working time because the working time of a mobile worker is essentially different from sailing time of a vessel (see paragraph 5 of the preamble of the agreement). Both sides included representatives with experience of navigating various river basins.

For example: Mr Gunter Lehniger, the workers chairman, was a captain with over 25 years of experience on the Danube with shipping companies from Austria and Hungary and views from various associations from Danube countries were received and taken into account. Representatives from associations navigating in inland waters of a maritime character, including tidal waters were also involved in the negotiations.

Question 2: Did you also consider the different company structure?

ESO, a signatory of the European Social Partner Agreement on Working Time for IWT, represents the owner-operators of the industry. Within EBU the cruise sub sector is well represented. Therefore the agreement is a fully encompassing agreement taking into account all the various specificities of the European IWT sector, such as:

- the various company structures;
- both freight and passenger transport;
- national and cross-border transport;
- all kinds of cargo types (bulk, tankers, etc.);
- all kinds of vessels (small and large, convoys, etc.); and
- permanent and seasonal operations.

Question 3: Does the fact that you refer to the definition of shipboard personnel used in Article 1.01 of Annex II to Directive 2006/87/EC mean that you intended to limit the application of your agreement to Member States which have inland waterways classified in Annex I of Directive 2006/87/EC?

In paragraph 2 (k) of the agreement, reference is made to Article 1.01 of Annex II to the EU directive 2006/87/CE (Directive of the European Parliament and Council of 12 December 2006 on the Technical guidelines for IWT vessels). The European Social Partners only used this reference in order not to establish yet another new definition of shipboard personnel. The EBU, ESO and ETF never intended by using this reference to limit the scope of the Social Partners' Agreement to the Member States who have inland waterways classified in Annex I of Directive 2006/87/CE.

Question 4: With the agreement, did you intend to cover all mobile workers (navigation and shipboard personnel) working on crafts in all EU Member States in commercial inland waterway transport, irrespective of the size of the craft or the size of the inland waterway sector.

As stated above, the European Social Partners intended from the very outset of the negotiations to conclude an all-encompassing agreement covering all mobile workers (navigation/nautical crew and shipboard personnel) working on crafts in all EU Member States in commercial IWT, irrespective of the size of the craft, of the fact whether inland waterways are interconnected or not, or the size of the IWT sector as a whole. According to the Social Partners, the size of the sector at national level is not a stable factor as the sector can grow or decrease.

It goes without saying that the European Social Partners wanted to create legal certainty for both employers and mobile workers in the European IWT sector. As you are aware, the sector is very specific in its nature and presents also very specific challenges in achieving legal certainty.

The EU-wide directive will provide EU-wide legal certainty for the industry and appropriate health and safety protection of the workers concerned.

EBU, ESO and ETF are aware that some national working time regulations may contain more favorable provisions which can be maintained (paragraph 17 of the agreement).

Compared to the general working time directive the agreement reached by the European Social Partners of the sector offers a tailor-made organization of the working time for all mobile workers in the commercial IWT sector in all Member States while providing an adequate level of protection in order to make the sector ready to face the huge challenges of a larger market share in a fully integrated transport chain.

EBU, ESO and ETF hope that the present clarifications will assist you in the further adoption procedure of the draft Directive and remain at your disposal for any further question on this matter.

Yours sincerely,

On behalf of
EBU



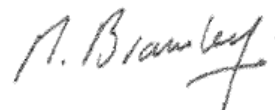
D. LEANDRI

ESO



C. VAN LANCKER

E.T.F.



N. BRAMLEY