



Council of the
European Union

Brussels, 16 December 2014
(OR. en)

16587/14

Interinstitutional File:
2014/0212 (NLE)

SOC 859
EMPL 199
SAN 474
TRANS 583

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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

COUNCIL DIRECTIVE 2014/.../EU

of ...

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

(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), jointly request that agreements concluded by them at Union level in matters covered by Article 153 TFEU be implemented by a Council decision on a proposal from the Commission.
- (2) By letter of 10 December 2007, 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 Agreement be implemented by means of a Council decision on a proposal from the Commission in accordance with Article 155(2) TFEU.
- (5) The appropriate instrument for implementing the Agreement is a directive.
- (6) The Commission has informed the European Parliament of its proposal.

- (7) The Commission drafted its proposal for a Directive, in accordance with its Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each paragraph of the Agreement.
- (8) 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 of the European Parliament and of the Council¹. That Directive lays down minimum health and safety requirements for the organisation of working time, including that of workers in the inland waterway transport.
- (9) It should be possible for the Member States to entrust social partners, at their joint request, with the implementation of this Directive, provided the Member States take all steps necessary to ensure that the objectives of this Directive can be met.
- (10) For the purposes of Article 14 of Directive 2003/88/EC, this Directive and the Agreement annexed hereto lay down more specific requirements relating to the organisation of the working time for mobile workers in inland waterway transport than those of that Directive.

¹ 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).

- (11) This Directive should apply without prejudice to any Union legislation which is more specific or which grants a higher level of protection to mobile workers in inland waterway transport.
- (12) This Directive should not 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 annexed hereto lay down minimum standards. The Member States and the social partners should be able to maintain or introduce more favourable provisions.
- (14) 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.
- (15) 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 rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (16) The implementation of the Agreement contributes to achieving the objectives under Article 151 TFEU.

- (17) According to the settled case-law of the Court of Justice of the European Union¹, the fact that an activity referred to in a directive does not yet exist in a Member State cannot release that Member 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 thereof.
- (18) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents², 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:

¹ See, *inter alia*, the Judgment of the Court of Justice of 14 January 2010 in Case C-343/08, *Commission v Czech Republic* ([2010] ECR I-275).

² 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 hereto.

Article 2

1. Member States may maintain or introduce provisions more favourable 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, legislative, regulatory or contractual arrangements different from those prevailing at the time of the adoption of this Directive, provided 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 shall 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 inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 ...,

For the Council

The President

ANNEX

European agreement concerning certain aspects of the organisation of working time in inland waterway transport

Whereas:

- (1) Directive 2003/88/EC concerning certain aspects of the organisation of working time lays down general minimum standards which, with the exception of the areas set out in Article 20(1) (daily rest, breaks, weekly rest, duration of night work), also relate to the organisation of working time in inland waterway transport. However, as these regulations do not take the specific working and living conditions in the inland waterway transport sector sufficiently into account, more specific rules are necessary, pursuant to Article 14 of Directive 2003/88/EC.
- (2) These more specific rules should safeguard a high level of health and safety for workers in the inland waterway transport sector.
- (3) Inland waterway transport is an international form of transport characterised first and foremost by cross-border activities on the European inland waterway transport network. The European inland waterway transport sector should therefore work towards creating homogeneous framework conditions for the labour market in this sector and preventing unfair competition based on differences between statutory working time structures.

- (4) In view of the importance of the transport sector for economic competitiveness, the European Union has set itself the goal of encouraging those modes of transport which use less energy, are more environmentally friendly or safer¹. Inland waterway transport is an environmentally friendly mode of transport with available capacity which can make a sustainable contribution to removing freight from Europe's roads and railways.
- (5) The organisation of work varies within the sector. The number of workers and their working time on board varies depending on the way in which the work is organised, the undertaking concerned, the geographical area of operation, the length of the voyage and the size of the craft. Some vessels sail continuously, i.e. 24 hours a day, with the crew working shifts. By contrast, medium-sized undertakings in particular tend to operate their vessels 14 hours a day for five or six days per week. In the inland waterway transport sector, the working time of a worker on board is not the same as the operating time of a craft.
- (6) One of the special features of the inland waterway transport sector is that it is possible for workers to have not only their place of work but also their accommodation or living quarters on board the vessel. It is therefore usual for workers to spend rest periods on board. Many workers in the inland waterway transport sector, especially those who are a long way from home, work several consecutive days on board in order to save on travelling time and then be able to spend several days at home or at another place of their own choosing. With a 1:1 pattern, for example, a worker has the same number of rest days and working days. For this reason the number of consecutive working days on board and the number of rest days can be correspondingly higher than is the case in land-based employment.

¹ See Communication from the Commission on the promotion of inland waterway transport "Naiades", COM(2006) 6 final, 17.1.2006.

- (7) Average working time in the inland waterway transport sector usually includes a significant amount of on-call 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. The maximum daily and weekly working times which are laid down may therefore be longer than those stipulated in Directive 2003/88/EC.
- (8) At the same time it must be recognised that the workload in inland waterway transport is influenced by several factors, such as noise, vibration and the organisation of working time. Without prejudice to the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work¹, provision is made for annual health checks to protect workers, taking into account the specific working conditions in this sector.
- (9) Account should be taken of the additional demands made on crew members during night work by limiting the maximum permissible number of night-time hours and by organising work appropriately.
- (10) The inland waterway transport sector not only employs workers but also uses self-employed workers². Self-employed status is determined in line with the applicable national law.
- (11) The working and living conditions on passenger vessels differ from those in other forms of inland waterway transport and thus special provisions are warranted. The different social environment, different work activities and seasonal nature of this sub-sector of the European inland waterway transport sector are reflected in differences in the way in which work is organised.

¹ OJ L 183, 29.6.1989, p.1.

² See Communication from the Commission COM (2010) 373 final, 13.7.2010: Reaffirming the free movement of workers: rights and major developments, section 1.1.

Pursuant to the Treaty on the Functioning of the European Union, and in particular Articles 154 and 155(2) thereof, the undersigned jointly request that this agreement concluded at EU level be implemented by a Council decision on a proposal by the Commission. The signatory parties have agreed the following:

Paragraph 1

Scope

1. This agreement shall apply to mobile workers employed as members of the navigation personnel (crew members) or in another function (shipboard personnel) on board a craft operated within the territory of a Member State in the commercial inland waterway transport sector.
2. Inland waterway transport operators shall not be considered workers within the meaning of this agreement, even if they have the status of workers in their own undertaking.
3. This agreement shall be without prejudice to national or international provisions concerning the safety of shipping that apply to mobile workers and to the persons referred to in Paragraph 1.2.
4. Where there are differences in respect of rest periods for mobile workers between this agreement and any national or international provisions concerning the safety of shipping, those provisions that offer a higher degree of protection to the health and safety of workers shall take precedence.

5. Mobile workers who are employed on board a craft operated within the territory of a Member State outside the commercial inland waterway transport sector and whose working conditions are the subject of collective bargaining and wage agreements concluded between employers' and workers' organisations may be covered by this agreement after these employers' and workers' organisations have been consulted and have given their consent, where the provisions of this agreement are more favourable to workers.

Paragraph 2

Definitions

For the purposes of this agreement, the following definitions apply:

- (a) "craft" means a vessel or item of floating equipment;
- (b) "passenger vessel" means a day trip or cabin vessel constructed and equipped to carry more than 12 passengers;
- (c) "working time" means the time during which a worker is scheduled to work or must be available to work (on-call time) on and for the craft on the instructions of the employer or the employer's representative;
- (d) "rest time" means the time outside working time; this term covers rest periods on a moving craft, on a stationary craft, and on land. It does not include short breaks (of up to 15 minutes);

- (e) “rest day” means an uninterrupted rest period of 24 hours which the worker spends in a place of his own choosing;
- (f) “inland waterway transport operator” means any person operating vessels for commercial purposes in the inland waterway transport sector for their own account;
- (g) “work schedule” contains the planned working days and rest days communicated to the worker in advance by the employer;
- (h) “night time” means the time between 23:00 and 06:00;
- (i) “night worker” means
 - (aa) on the one hand, any worker who, during night time, works at least three hours of their daily working time as a normal course;
 - (bb) on the other hand, any worker who is likely during night time to work a certain proportion of their annual working time, as defined at the choice of the Member State concerned:
 - (aaa) by national legislation, following consultation with the two sides of industry,
 - or
 - (bbb) by collective agreements or agreements concluded between the two sides of industry at national or regional level
- (j) “shift worker” means any worker whose work schedule is part of shift work;

- (k) “shipboard personnel” is defined in accordance with definition No 103 in Article 1.01 of Annex II to Directive 2006/87/EC¹ ;
- (l) “mobile worker” means any worker employed as a member of travelling personnel by an undertaking which operates transport services for passengers or goods by inland waterway; and references to “workers” in this agreement shall be interpreted accordingly;
- (m) “season” means a period of no more than nine consecutive months out of twelve months in which activities are tied to certain times of the year as a result of external circumstances, e.g. weather conditions or tourist demand.

Paragraph 3

Working time and reference period

1. Without prejudice to Paragraph 4, the working hours standard is based on an eight-hour day.
2. Working time may be extended in accordance with Paragraph 4 provided that an average of 48 hours per week is not exceeded within 12 months (the reference period).
3. The maximum working time in the reference period is 2 304 hours (calculation basis: 52 weeks minus a minimum four weeks’ leave x 48 hours). Periods of paid annual leave and periods of sick leave shall not be included in the calculation of the average or shall be neutral. Rest time entitlements resulting from statutory public holidays shall also be deducted.

¹ Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC (OJ L 389, 30.12.2006, p. 1-260).

4. For employment relationships with a duration of less than the reference period, the maximum permissible working time shall be calculated pro rata.

Paragraph 4

Daily and weekly working time

1. Working time shall not exceed:
 - (a) 14 hours in any 24-hour period; and
 - (b) 84 hours in any seven-day period.
2. 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.

Paragraph 5

Working days and rest days

1. No more than 31 days may be worked consecutively.
2. If, according to the work schedule, the number of working days is no more than the number of rest days, consecutive working days shall be followed immediately by the same number of consecutive rest days. Exceptions to the number of consecutive rest days to be granted immediately shall be allowed on condition that:
 - (a) the maximum number of 31 consecutive working days is not exceeded, and

- (b) the minimum number of consecutive rest days referred to in 3.a), 3.b) or 3.c) is granted immediately after the consecutive working days worked, and
 - (c) the extended or exchanged period of working days is balanced out within the reference period.
3. If, according to the work schedule, there are more working days than rest days, the minimum number of consecutive rest days which immediately follow the consecutive working days shall be:
- (a) 1st to 10th consecutive working day: 0.2 rest days per consecutive working day (e.g. 10 consecutive working days = 2 rest days);
 - (b) 11th to 20th consecutive working day: 0.3 rest days per consecutive working day (e.g. 20 consecutive working days = 5 rest days);
 - (c) 21st to 31st consecutive working day: 0.4 rest days per consecutive working day (e.g. 31 consecutive working days = 9.4 rest days).

Partial rest days shall, in this calculation, be added to the minimum number of consecutive rest days and granted only as full days.

Paragraph 6
Seasonal work on passenger vessels

Notwithstanding the provisions of paragraphs 4 and 5 of this agreement, the following provisions may be applied to all workers employed on board a passenger vessel during the season:

1. Working time shall not exceed:
 - (a) 12 hours in any 24-hour period; and
 - (b) 72 hours in any seven-day period.
2. Workers shall be credited with 0.2 rest days per working day. At least two rest days shall actually be granted during every period of 31 days. The remaining rest days shall be granted by agreement.
3. Taking the previous subparagraph and Paragraph 3, subparagraph 4 into account, rest days shall be granted and the average working time of 48 hours adhered to in accordance with Paragraph 3 on the basis of collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

Paragraph 7

Rest periods

Workers shall have regular rest periods which are sufficiently long and continuous and the duration of which is expressed in units of time in order to ensure that, as a result of fatigue or irregular working patterns, workers 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.

Rest periods shall not be less than:

- (a) 10 hours in each 24-hour period, of which at least six hours are uninterrupted, and
- (b) 84 hours in any seven-day period.

Paragraph 8

Breaks

Any worker whose daily working time exceeds six hours is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

Paragraph 9

Maximum working time during night time

Based on a night time of seven hours, the maximum weekly working time during night time shall be 42 hours per seven day period.

Paragraph 10

Annual leave

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

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

Paragraph 11

Protection of minors

1. Workers under the age of 18 shall be covered by the provisions of Directive 94/33/EC on the protection of young people at work¹.
2. By way of exception, Member States may, by legislative or regulatory provision, authorise work by young people over the age of 16 who are no longer subject to compulsory full-time schooling under national law during the period in which night work is prohibited under Directive 94/33/EC if this is necessary in order to achieve the objective of a 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.

¹ OJ L 216, 20.8.1994, p. 12.

Paragraph 12

Verifications

1. Records shall be kept of each worker's daily working time and rest time, in order to be able to verify compliance with the provisions of Paragraphs 3, 4, 5, 6, 7, 9, 10, 11 and 13.
2. These records shall be kept on board until at least the end of the reference period.
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.
4. The records shall contain the following minimum information:
 - (a) name of the vessel,
 - (b) name of the worker,
 - (c) name of the competent boatmaster,
 - (d) date,
 - (e) working day or rest day,
 - (f) beginning and end of the daily working or rest periods.
5. Workers shall be given a copy of the endorsed records relating to them. They shall keep these with them for one year.

Paragraph 13
Emergency situations

1. The boatmaster of a vessel or his representative shall have the right to require a worker to perform any hours of work necessary for the immediate safety of the craft, persons on board or cargo or for the purpose of giving assistance to other vessels or persons in distress.
2. In accordance with subparagraph 1, the boatmaster or his representative may require a worker to perform any hours of work necessary until the normal situation has been restored.
3. As soon as is practicable after the normal situation has been restored, the boatmaster or his representative shall ensure that all workers who have performed work in a scheduled rest period are provided with an adequate period of rest.

Paragraph 14
Health assessment

1. All workers shall be entitled to an annual health assessment free of charge. During this assessment, particular attention shall be paid to identifying symptoms or conditions which could be a result of work on board with minimum daily rest periods and/or minimum rest days in accordance with Paragraphs 5 and 6.

2. Night workers suffering from health problems recognised as being connected with the fact that they perform night work shall be transferred whenever possible to day work to which they are suited.
3. The free health assessment shall comply with medical confidentiality.
4. The free health assessment may be performed under the national health system.

Paragraph 15

Safety and health protection

1. Night workers and shift workers shall have safety and health protection appropriate to the nature of their work.
2. Appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers shall be equivalent to those applicable to other workers and available at all times.

Paragraph 16
Pattern of work

An employer who intends to organise work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, depending on the type of activity, and of safety and health requirements, especially as regards breaks during working time.

Paragraph 17
Closing provisions

1. More favourable provisions

This agreement shall be without prejudice to the right of Member States

- (a) to maintain or introduce legislative or regulatory provisions; or
- (b) to facilitate or permit the application of collective agreements or agreements between the two sides of industry

which are more favourable to the protection of the health and safety of workers than the provisions set out in this agreement.

2. Non-regression clause

The implementation of this agreement shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers covered by this agreement.

3. Follow-up to the agreement

Both sides of industry shall monitor the implementation and application of this agreement in the context of the sectoral dialogue committee for inland waterway transport, particularly with regard to occupational health issues.

4. Review

The parties shall review the above provisions two years after the end of the implementation period laid down in the Council Decision putting this agreement into effect.

Done at Brussels, 15 February 2012

European Barge Union (EBU)

European Skippers Organisation (ESO)

European Transport Workers' Federation (ETF)
