



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: Directive 2000/ /EC of the European Parliament and of 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.

Joint text

**approved by the Conciliation Committee
provided for in Article 251(4) of the EC Treaty**

**DIRECTIVE 2000/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

of

amending Council Directive 93/104/EC
concerning certain aspects of the organisation of working time to
cover sectors and activities excluded from that Directive

THE EUROPEAN PARLIAMENT AND COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on,

⁽¹⁾ OJ C 43, 17.2.1999, p. 1.

⁽²⁾ OJ C 138, 18.5.1999, p. 33.

⁽³⁾ Opinion of the European Parliament of 14 April 1999 (OJ C 219 of 30.7.1999, p. 231), Council Common Position of 12 July 1999 (OJ C 249 of 1.9.1999, p. 17) and Decision of the European Parliament of 16 November 1999 (not yet published in the Official Journal).

Whereas:

- (1) Article 137 of the Treaty provides that the Community is to support and complement the activities of the Member States with a view to improving the working environment to protect workers' health and safety; Directives adopted on the basis of that Article are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;
- (2) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time ⁽¹⁾ lays down minimum safety and health requirements for the organisation of working time, in respect of periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work; that Directive should be amended for the following reasons:
- (3) Road, air, sea and rail transport, inland waterways, sea fishing, other work at sea and the activities of doctors in training are excluded from the scope of Council Directive 93/104/EC;
- (4) The Commission, in its proposal of 20 September 1990, did not exclude any sectors and activities from Council Directive 93/104/EC, nor did the European Parliament in its Opinion of 20 February 1991 accept such exclusions;
- (5) The health and safety of workers should be protected at the workplace not because they work in a particular sector or carry out a particular activity, but because they are workers;
- (6) As regards sectoral legislation for mobile workers, a complementary and parallel approach is needed in the provisions on transport safety and the health and safety of the workers concerned;

⁽¹⁾ OJ L 307, 13.12.1993, p. 18.

- (7) Account needs to be taken of the specific nature of activities at sea and of doctors in training;
- (8) Protection of the health and safety of mobile workers in the excluded sectors and activities should also be guaranteed;
- (9) The existing provisions concerning annual leave and health assessments for night work and shift work should be extended to include mobile workers in the excluded sectors and activities;
- (10) The existing provisions on working time and rest need to be adapted for mobile workers in the excluded sectors and activities;
- (11) All workers should have adequate rest periods; the concept of "rest" must be expressed in units of time, i.e. in days, hours and/or fractions thereof;
- (12) A European Agreement in respect of the working time of seafarers has been put into effect by means of a Council Directive ⁽¹⁾, on a proposal from the Commission, in accordance with Article 139(2) of the Treaty; accordingly, the provisions of this Directive should not apply to seafarers;
- (13) In the case of those "share-fishermen" who are employees, it is for Member States to determine, pursuant to Article 7 of Council Directive 93/104/EC, the conditions for entitlement to, and granting of, annual leave, including the arrangements for payments;

⁽¹⁾ 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) (OJ L167 of 2.7.1999, p.33).

- (14) Specific standards laid down in other Community instruments relating, for example, to rest periods, working time, annual leave and night work for certain categories of workers should take precedence over the provisions of Council Directive 93/104/EC as amended by this Directive;
- (15) In the light of the case law of the Court of Justice of the European Communities the provision relating to Sunday rest should be deleted;
- (16) In its judgment in Case C-84/94 *United Kingdom v. Council* ⁽¹⁾ the Court of Justice ruled that Council Directive 93/104/EC accords with the principles of subsidiarity and proportionality set out in Article 5 of the Treaty; there is no reason to assume that that judgment is not applicable to comparable rules concerning a number of aspects of the organisation of working time in excluded sectors and activities,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 93/104/EC is hereby amended as follows:

- 1) Article 1(3) shall be replaced by the following:

"3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Articles 14 and 17 of this Directive.

⁽¹⁾ [1996] ECR I - 5755

This Directive shall not apply to seafarers, as defined in 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) (*) without prejudice to Article 2(8) of this Directive.

(*) OJ L 167 of 2.7.1999, p.33.";

2) in Article 2, the following shall be added:

- "7. "mobile worker" shall mean any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway.
8. "offshore work" shall mean work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel.
9. "adequate rest" shall mean that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term".

- 3) In Article 5, the following subparagraph shall be deleted:

"The minimum rest period referred to in the first subparagraph shall in principle include Sunday."

- 4) Article 14 shall be replaced by the following:

"Article 14

More specific Community provisions

This Directive shall not apply where other Community instruments contain more specific requirements relating to the organisation of working time for certain occupations or occupational activities."

- 5) Article 17(2.1) shall be replaced by the following:

"2.1. from Articles 3, 4, 5, 8 and 16:

- (a) in the case of activities where the worker's place of work and his place of residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another;
- (b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;
- (c) in the case of activities involving the need for continuity of service or production, particularly:

- (i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, including the activities of doctors in training, residential institutions and prisons;
 - (ii) dock or airport workers;
 - (iii) press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services;
 - (iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants;
 - (v) industries in which work cannot be interrupted on technical grounds;
 - (vi) research and development activities;
 - (vii) agriculture;
 - (viii) workers concerned with the carriage of passengers on regular urban transport services;
- (d) where there is a foreseeable surge of activity, particularly in:
- (i) agriculture;
 - (ii) tourism;
 - (iii) postal services;

(e) in the case of persons working in railway transport:

(i) whose activities are intermittent;

(ii) who spend their working time on board trains; or

(iii) whose activities are linked to transport timetables and to ensuring the continuity and regularity of traffic;".

6) In Article 17(2) the following shall be added:

2.4. from Articles 6 and 16(2) in the case of doctors in training:

a) with respect to Article 6, for a transitional period of 5 years from*

(i) Member States may have up to 2 more years, if necessary, to take account of difficulties in meeting the working time provisions with respect to their responsibilities for the organisation and delivery of health services and medical care. At least 6 months before the end of the transitional period, the Member State concerned shall inform the Commission giving its reasons, so that the Commission can give an opinion, after appropriate consultations, within the 3 months following receipt of such information. If the Member State does not follow the opinion of the Commission, it will justify its decision. The notification and justification of the Member State and the opinion of the Commission shall be published in the Official Journal of the European Communities and forwarded to the European Parliament.

- (ii) Member States may have an additional period of up to 1 year, if necessary, to take account of special difficulties in meeting the above mentioned responsibilities. They shall follow the procedure set out in paragraph (i).

Within the context of the transitional period:

- (iii) Member States shall ensure that in no case will the number of weekly working hours exceed an average of 58 during the first 3 years of the transitional period, an average of 56 for the following 2 years and an average of 52 for any remaining period.
- (iv) The employer shall consult the representatives of the employees in good time with a view to reaching an agreement, wherever possible, on the arrangements applying to the transitional period. Within the limits set out in point (a)(iii), such an agreement may cover:
- the average number of weekly hours of work during the transitional period; and
 - the measures to be adopted to reduce weekly working hours to an average of 48 by the end of the transitional period;
- b) with respect to Article 16(2), provided that the reference period does not exceed 12 months, during the first part of the transitional period specified in paragraph (a) (iii), and six months thereafter.";

* four years after the date of entry into force of Directive 2000/ /EC.

7) The following Articles shall be inserted:

"Article 17a

Mobile workers and offshore work

1. Articles 3, 4, 5 and 8 shall not apply to mobile workers.
2. Member States shall, however, take the necessary measures to ensure that such mobile workers are entitled to adequate rest, except in the circumstances laid down in Article 17(2.2).
3. Subject to compliance with the general principles relating to the protection of the safety and health of workers, and provided that there is consultation of representatives of the employer and employees concerned and efforts to encourage all relevant forms of social dialogue, including negotiation if the parties so wish, Member States may, for objective or technical reasons or reasons concerning the organisation of work, extend the reference period referred to in Article 16(2) to twelve months in respect of workers who mainly perform offshore work.
4. On(*) the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to offshore workers from a health and safety perspective with a view to presenting, if need be, the appropriate modifications.

(*) Five years from the date of entry into force of Directive 2000/./EC.

Article 17b

Workers on board sea-going fishing vessels

1. Articles 3, 4, 5, 6 and 8 shall not apply to any worker on board a sea-going fishing vessel flying the flag of a Member State.
2. Member States shall, however, take the necessary measures to ensure that any worker on board a sea-going fishing vessel flying the flag of a Member State is entitled to adequate rest and to limit the number of hours of work to 48 hours a week on average calculated over a reference period not exceeding 12 months.
3. Within the limits set out in paragraphs 2, 4 and 5 Member States shall take the necessary measures to ensure that, in keeping with the need to protect the safety and health of such workers,
 - a) the working hours are limited to a maximum number of hours which shall not be exceeded in a given period of time, or
 - b) a minimum number of hours of rest are provided within a given period of time.

The maximum number of hours of work or minimum number of hours of rest shall be specified by law, regulations, administrative provisions or by collective agreements or agreements between the two sides of the industry.

4. The limits on hours of work or rest shall be either:
- a) maximum hours of work which shall not exceed:
 - i) 14 hours in any 24-hour period, and
 - ii) 72 hours in any 7-day period;
 - or
 - b) minimum hours of rest which shall not be less than:
 - i) 10 hours in any 24-hour period, and
 - ii) 77 hours in any 7-day period.
5. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

6. In accordance with the general principles of the protection of the health and safety of workers, and for objective or technical reasons or reasons concerning the organisation of work, Member States may allow exceptions, including the establishment of reference periods, to the limits laid down in paragraphs 2, 4 and 5. Such exceptions shall, as far as possible, comply with the standards laid down but may take account of more frequent or longer leave periods or the granting of compensatory leave for the workers. These exceptions may be laid down by means of

i) laws, regulations or administrative provisions provided there is consultation, where possible, of the representatives of the employers and workers concerned and efforts are made to encourage all relevant forms of social dialogue

or

ii) collective agreements or agreements between the two sides of industry.

7. The master of a sea-going fishing vessel shall have the right to require workers on board to perform any hours of work necessary for the immediate safety of the vessel, persons on board or cargo, or for the purpose of giving assistance to other vessels or persons in distress at sea.

8. Member States may provide that workers on board sea-going fishing vessels for which national legislation or practice determines that these vessels are not allowed to operate in a specific period of the calendar year exceeding one month, shall take annual leave in accordance with Article 7 within the above mentioned period."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than ^(*), or shall ensure that, by that date at the latest, the two sides of industry have introduced the necessary measures by agreement, the Member States being required to take any necessary measure to enable them at any time to be in a position to guarantee the results imposed by this Directive. With regard to doctors in training that date shall be ^(**). They shall forthwith inform the Commission thereof.
2. When Member States adopt the measures referred to in paragraph 1, 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 a reference shall be laid down by the Member States.
3. Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.
4. Member States shall communicate to the Commission the texts of the provisions of national law already adopted or being adopted in the field governed by this Directive.

^(*) Three years after the date of entry into force of this Directive.

^(**) Four years after the entry into force of the Directive.

Article 3

Not later than ^(*)the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to workers on board sea-going fishing vessels, and, in particular examine whether these provisions remain appropriate, in particular, as far as health and safety are concerned with a view to proposing suitable amendments, if necessary.

Article 4

Not later than^(**) the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to workers concerned with the carriage of passengers on regular urban transport services, with a view to presenting, if need be, the appropriate modifications to ensure a coherent and suitable approach in the sector.

Article 5

This Directive shall enter into force on the date of its publication in the Official Journal of the European Communities.

(*) Nine years from the date of entry into force of this Directive.

(**) Five years from the date of entry into force of this Directive.

Article 6

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President