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**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the common position established by the Council with a view to the adoption of a European Parliament and Council directive amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive (8642/1/1999 - C5-0036/1999 – 1998/0318(COD))

Committee on Employment and Social Affairs

Rapporteur: Miet Smet

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members to give assent*  
*majority of the votes cast in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Abbreviations for committees***

- I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG Committee on Budgets
- III. CONT Committee on Budgetary Control
- IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON Committee on Economic and Monetary Affairs
- VI. JURI Committee on Legal Affairs and the Internal Market
- VII. INDU Committee on Industry, External Trade, Research and Energy
- VIII. EMPL Committee on Employment and Social Affairs
- IX. ENVI Committee on the Environment, Public Health and Consumer Policy
- X. AGRI Committee on Agriculture and Rural Development
- XI. PECH Committee on Fisheries
- XII. REGI Committee on Regional Policy, Transport and Tourism
- XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE Committee on Development and Cooperation
- XV. AFCO Committee on Constitutional Affairs
- XVI. FEMM Committee on Women's Rights and Equal Opportunities
- XVII. PETI Committee on Petitions

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## Procedural page

At its sitting of 6 May 1999 Parliament confirmed as its first reading under the codecision procedure its vote of 14 April 1999 on the proposal for a European Parliament and Council Directive amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive.

At the sitting of 23 July 1999 the President of Parliament announced that the common position had been received and referred to the Committee on Employment and Social Affairs.

The committee appointed Miet Smet rapporteur at its meeting of 27 July 1999.

It considered the common position and the draft recommendation for second reading at its meetings of 31 August 1999, 20 September 1999 and 14 October 1999.

At the last meeting it adopted the draft legislative resolution by 47 votes to 1, with 1 abstention.

The following were present for the vote: Hermange, chairperson; Menrad, vice-chairman; Smet, rapporteur; Ainardi; Andersson; Aviles Perea; van den Burg; Bushill-Matthews; Cauquil (for Laguiller); Cercas Alonso; Damiao; Ducarme; Dover (for Cocilovo); Ettl; Figueiredo; Flautre; Glase; Helmer (for Fatuzzo); Hudghton; Hughes; Huhne (for Sbarbati, pursuant to Rule 153.2); Kratsa; Lambert; Lipietz (for Evans), Lisi (for Lombardo); Lynne; Malliori (for De Rossa); Manders (for Cacciari); T. Mann; Mantovani; Medina Ortega (for Ghilardotti); Miguelez Ramos (for Gillig); Müller (for Jöns); Nobilia; Oomen-Ruijten (for Podesta); Parish (for Provan); Perez Alvarez; Pronk; Reis, Saifi; Schmid; Skinner; Stenzel; Suominen; Thorning-Schmidt; Trentin (for Koukiadis); Van Lancker; Watts (for Rocard) and Weiler.

The recommendation for second reading was tabled on 21 October 1999.

The deadline for tabling amendments to the common position will be indicated in the draft agenda for the relevant part-session.

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution of the European Parliament on the Council common position with a view to adopting a European Parliament and Council directive amending Council directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive (8642/1/1999 - C5-0036/1999 – 1998/0318(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the common position of the Council, (8642/1/1999 - C5-0036/1999),
  - having regard to its opinion at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council COM(1998) 662<sup>2</sup>,
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A5-0041/1999),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and the Commission.

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<sup>1</sup> OJ C 219, 30.7.1999, p. 234

<sup>2</sup> OJ C 43, 17.2.1999, p. 1

(Amendment 1)  
RECITAL 15

Whereas in the light of the case law of the European Court of Justice the provision relating to Sunday rest should be deleted;

Whereas in a judgment of 12 November 1996 the Court of Justice rendered null and void Article 5, second paragraph, of Directive 93/104/EC; having regard to the resolution of the European Parliament of 12 December 1996 on Sunday working (OJ C 20, 20.1.1997, p. 140); insists that the Commission bring forward a new proposal on the question during the global revision of this Directive;

Justification:

This reconfirms Parliament's amendment at first reading and Parliament's resolution on Sunday work of 12 December 1996.

(Amendment 2)  
ARTICLE 1(2)

Article 2(7) (Directive 93/104/EC)

7. 'mobile worker' shall mean any worker employed as a member of travelling or flying personnel by an undertaking which for hire or reward or on its own account operates transport services for passengers or goods by road, air or inland waterway.

7. 'mobile worker' shall mean any worker employed as a member of travelling or flying personnel by an undertaking which for hire or reward operates transport services for passengers or goods by road, air or inland waterway.

Justification:

The amendment rejects Council's attempt to include own-account transport operators in the definition of mobile workers. The result of this amendment is that own-account transport operators receive the full protection of the Directive.

(Amendment 3)  
ARTICLE 1(5)

Article 17(2.1)(a) (Directive 93/104/EC)

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

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 or where the worker's different places of work are distant from one another, particularly offshore work;

residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another;

Justification:

This amendment, under Article 17.2 derogations, attempts to avoid the restriction of the derogation to offshore workers.

(Amendment 4)

ARTICLE 1(5)

Article 17(2.1)(c)(viii) (Directive 93/104/EC)

(c) in the case of activities involving the need for continuity of service or production, particularly:...

(c) in the case of activities involving the need for continuity of service or production, particularly:...

(viii) workers concerned with the carriage of passengers on regular urban transport services who are not covered by Article 17a;

(viii) workers concerned with the carriage of passengers on regular urban transport services;

Justification:

This amendment aims to delete a superfluous addition in the Common Position.

(Amendment 5)

ARTICLE 1(6)

Article 17(2)(2.4)(Directive 93/104/EC)

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

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:

“2.4 from Article 6, for a transitional period of four years from the date of adoption of this Directive, in the case of doctors in training, where there is an agreement between the employer and workers' representatives. In no case shall the number of weekly hours worked exceed 54 over a four month reference period.

a) with respect to Article 6, for a transitional period of nine years from .... (four years after the date of entry into force of the Directive). Within the context of this derogation:

i) Member States shall ensure that in no case will the number of weekly working hours exceed an average of 60 during the first three years of the transitional period, an average of 56 for the following three years and an average of 52 for the remaining three years.

ii) 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 (i), 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), and six months thereafter.”;

Justification:

This reconfirms Parliament’s first reading position on the transition period and weekly working hours of doctors in training.

(Amendment 6)

ARTICLE 1(7)

Article 17a (Directive 93/104/EC)

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, 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 mobile workers and workers who mainly perform offshore work.

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 and negotiation between representatives of the employer and employees concerned, 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. Not later than (.....\*) the Commission shall, in consultation with the Member States and with management and labour at European level, review the operation of the provisions with regard to offshoreworkers from a health and safety perspective.

(\* five years from the date of entry into force of this Directive)

Justification:

This attempts to reach a compromise position between the position of Parliament at first reading and the text of the Common Position as regards derogations for mobile workers and offshore workers.

(Amendment 7)

ARTICLE 1(7)

Article 17b(2) (Directive 93/104/EC)

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.

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 a maximum number of weekly hours worked of 48 hours over a reference period of 12 months. These provisions shall not be subject to derogation.

Justification:

This amendment concerns new text introduced by the Common Position on sea-fishermen, and introduces a maximum number of weekly hours over a 12 month reference period.

(Amendment 8)

ARTICLE 2

(Footnote)

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than <sup>(1)</sup>,...

<sup>(1)</sup> Four years after the date of entry into force of this Directive

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than <sup>(1)</sup>,...

<sup>(1)</sup> Two years after the date of entry into force of this Directive

Justification:

This reinstates the text at first reading as regards the date for transposition of the Directive.

(Amendment 9)  
Article 3a (new)

Not later than (.....\*) the Commission shall, in consultation with the Member States and with 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 proposing a coherent and suitable approach in this sector.

(\*five years from the date of entry into force of this Directive)

Justification:

This amendment foresees a review of operation in urban passenger transport to ensure a coherent approach in this sector (whether road or rail).

## EXPLANATORY STATEMENT

On 23 November 1993 the Council adopted a Directive (93/104/EC) concerning ‘certain aspects of the organisation of working time’ as a measure to protect the safety and health of workers at work (former Article 118a). *On the one hand*, the Directive provides for a daily rest period of 11 hours, breaks, a weekly rest period of 24 hours, a maximum weekly working time of 48 hours (including overtime), four weeks’ minimum annual leave and reference periods for calculating all these rest periods and working times. Night work (up to 8 hours per 24 hours) and shiftwork are also dealt with. *On the other hand*, the Directive permits numerous derogations, for example for managing executives, family workers or workers officiating at religious ceremonies. In addition to these derogations, certain sectors and activities are excluded from the scope of the Directive altogether, notably transport, work at sea, and the work of doctors in training. Work at sea comprises sea fishing and other offshore work. Transport comprises road, air, sea and rail transport and inland shipping.

The Commission proposes (in its White Paper of 15 July 1997 and the Communication of 18 November 1998) that part of these excluded sectors and types of work be incorporated into *the Directive* (by rescinding their exclusion) while another part should be partially regulated *outside the Directive* (by means of rules per sector, preferably on the basis of agreements between employers and employees at European level). This report concerns only the first element, particularly the proposal for a Directive amending Directive 93/104/EC. A review of the provisions designed to incorporate excluded sectors and activities into the Directive reveals the following:

1. Under the Commission proposal, *mobile workers* (in sea fishing, road and air transport and inland shipping) would only enjoy a right to adequate rest, a maximum working time per year, 4 weeks’ annual leave and protection in the event of night work. It is up to the Member States to decide the details. The provisions of the Directive concerning daily and weekly rest periods, breaks, weekly working time and night work thus do not apply to mobile workers, and Member States may deviate from the stipulated reference period. *Non-mobile workers* would be fully covered by the Directive.
2. In *road transport* (6.5 million workers), half the workers are employed in road haulage proper (i.e. for the account of third parties) and the other half in the non-excluded sectors (own-account transport, e.g. transporting concrete in the building industry). Despite long and difficult negotiations between representatives of European employers and employees, no agreement has been reached. The Commission has made a proposal of its own, which is before the Council.
3. In the case of *inland navigation* (45 000 workers) and *sea fishing* (270 000 workers) there are no collective agreements. The Commission has decided to make two proposals for Directives, but is already at this stage proposing to include workers in these sectors among mobile workers.
4. *Share-fishermen* fall under sea fishing, except as regards the clause in the Directive making it compulsory to grant 4 weeks’ annual paid leave.

5. For *air transport* (375 000 workers), a collective agreement has existed since 1 March 1994, but only for ground staff (80%). For flight staff (20%), the Commission has promised to make a proposal itself.
6. In the case of *rail transport* (1 million workers) an agreement has existed since 18 September 1996 which permits complete incorporation in the Directive on condition that similar provisions also apply to other transport sectors.
7. For *sea transport* (160 000 workers) the Commission has made two proposals for Directives. One concerns the agreement between European employers and employees on the working time of seafarers, and has now led to Directive 1999/63/EC of 21 June 1999. For the other proposal, concerning seafarers on board vessels visiting Community ports, reference should be made to the report by Stephen Hughes.
8. Under the Commission proposal, workers in the *offshore sector* (45 000 workers) would be subject to the Directive except for the clause concerning the reference period for calculating maximum weekly working time. Under the Directive, the reference period is 4 months. The Commission proposal would allow Member States to substitute a period of 12 months. The maximum weekly working time itself would be retained, as would the annual leave period. It would be possible to deviate from the provisions concerning daily and weekly rest periods, breaks and night work.
9. The Directive would apply to the work of *doctors-in-training* (270 000 workers), but only after a transitional period of 7 years (from the date of adoption of the Directive) but, for the purposes of determining the maximum weekly working time, it would apply (in particular, a limit of 54 hours, rather than 48, calculated over 4 months, is proposed).
10. Member States would have two years to transpose the Directive.

The European Parliament delivered its opinion on the proposals for Directives at first reading on 14 April 1999, proposing the following amendments (excluding recitals and marginal comments).

1. A clause was inserted in the definition of *mobile workers* concerning personnel employed in rail or road passenger transport services working on certain scheduled services (covering a distance of not more than 50 kilometres). Examples include bus-drivers driving in or between towns. As road transport already falls within the definition of mobile workers, this is only of relevance to a limited proportion of rail transport, to which more exceptions would apply in future and which would hence enjoy less protection.
2. A definition of *share-fishermen* was inserted, as the proposal for a Directive excluded them from the article on annual leave. The definition inserted read 'crew members of a fishery vessel whose remuneration consists solely of a share in the vessel's yield/proceeds'.
3. The transitional period for *doctors-in-training* was reduced from 7 years to 4.
4. Member States were required to consult employers and employees with a view to extending the reference period for the *offshore sector* from 4 months to 12. In

principle, there must be an agreement, but in the absence of any, the Member State could itself extend the reference period to 12 months for one year.

On 25 May 1999 the Council reached political agreement, and on 16 July 1999 it adopted a Common Position, the main points of which were as follows:

1. *The implementation period* (Article 2 of the Council proposal) for transposition of the Directive into national legislation was doubled from 2 to 4 years.
2. In the definition of “*mobile workers*” (Article 2(7)), firstly, own-account transport operators were inserted. This meant that in future mobile workers performing transport operations in the non-excluded sectors (e.g. the chemical or timber industry) would not enjoy the full protection of the Directive but only that accorded to mobile workers. Sea fishermen and workers concerned with the carriage of passengers on scheduled transport services over a limited distance were excluded from the definition of mobile workers. This has two consequences. Sea fishermen would be subject to different provisions to seafarers and would enjoy less protection than them (see below). Urban rail transport would be added to the excluded categories, so that it would receive greater protection (see below).
3. The definition of “*share-fishermen*” (Article 8a) was deleted, as was the exclusion of share-fishermen from the clause concerning annual leave (Article 17a(4)), as the rules on annual leave for share-fishermen would be left to Member States to determine (Recital 13).
4. The derogation for *offshore work* (Articles 17(2.1)(a) & 17a) is a twofold problem. There is a danger that making the existing derogations for work where the place of work and the worker’s place of residence are distant from each other (or where the worker’s various places of work are distant from each other) applicable specifically to offshore work may result in other workers to whom this provision has applied hitherto falling by the wayside. The Council also rejects the European Parliament’s amendments concerning extension of the reference period, with the result that Member States acquire the right to extend the reference period without the consent of, or agreement between, the relevant employers and employees.
5. For workers in *scheduled urban rail passenger transport*, such as underground or tram services, (Article 17(2.1)(c)(viii)), it is possible to deviate from the articles concerning daily and weekly rest periods, breaks, night work and reference periods. Maximum weekly working times and annual leave remain applicable. This proposal occupies an intermediate position between that of the Commission (greater protection) and that of the European Parliament (less protection).
6. For *railway transport workers* on board trains, with irregular working hours due to transport timetables (Article 17(2.1)(e)), it is likewise possible to deviate from the same articles.
7. In the case of *doctors-in-training* (Article 17(2.4)) the Commission provided for a transitional period of 7 years, subject to agreement between employers and employees, with a maximum weekly working time of 54 hours over a reference period of 4 months. The European Parliament agreed with the principle of, and arrangements for, the transitional period, but wished to restrict it to 4 years. The Council agrees with the principle of the transitional period, but wishes it to continue for 13 years. This would be

broken down into a 4-year implementation period followed by a 3-year period with a maximum of 60 hours per week over a reference period of 12 months, then 3 years with a maximum of 56 hours per week over a reference period of 6 months and finally 3 years with a maximum of 52 hours per week over a reference period of 6 months. The requirement of agreement between employers and employees is deleted, and all that remains is a requirement to consult them.

8. *Workers on board sea-going fishing vessels* (Article 17b) are excluded from the definition of “mobile workers” and dealt with separately. Thus they are not protected in the same way as mobile workers, whether or not with additional provisions laid down by a Directive yet to be proposed by the Commission. They would enjoy the protection laid down in Directive 1999/63/EC (now adopted) for seafarers, comprising a maximum number of working hours (14 in any 24, and 72 over 7 days) and a minimum number of hours of rest (10 in any 24, and 77 per 7 days).

At second reading the Committee on Employment and Social Affairs proposes:

1. to reintroduce the 2-year transposition period for the directive;
2. to reintroduce Parliament’s first reading amendment on Sunday working;
3. not to accept inclusion of own-account transport operators in the definition of mobile workers;
4. to accept the inclusion of sea-fishermen in this proposal but to introduce a maximum working week of 48 hours over a reference period of 12 months;
5. a procedure which would enable there to be equal health and safety protection for all workers concerned with urban passenger transport (whether by road or rail);
6. to reintroduce Parliament’s first reading position on the transition period for doctors in training (4 years) with a maximum weekly working hours (54 hours) over a 4 month reference period;
7. to allow a derogation on the reference period for offshore workers but subject to consultation with and negotiation between the social partners and to review within 5 years.

The amendments the European Parliament can make (within three months of communication of the common position) must be adopted by an absolute majority. If the Council does not accept them (within three months of receipt of the European Parliament’s amendments), the conciliation committee is to be convened within six weeks.