



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251 (2) of the EC-Treaty**

**concerning the**

**Common Position of the Council on the proposal for a European Parliament and  
Council Directive amending Directive 93/104/EC of 23 November 1993  
concerning certain aspects of the organization of working time to cover sectors  
and activities excluded from that Directive**

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**1. BACKGROUND**

The Commission sent the above proposal for a Directive based on Article 118A of the Treaty (now Article 137) to the Parliament and the Council on 25 November 1998.

The Economic and Social Committee gave its Opinion on 25 March 1999.

The European Parliament adopted an Opinion on First Reading on 14 April 1999.

The Commission accepted 12 amendments proposed by the Parliament. It did not make an amended proposal, but reported its position on all the amendments to the Council.

The Council adopted its Common Position unanimously on 12.7.99. The Commission maintained its proposal in respect of the key points at issue - see 3 below.

**2. PURPOSE OF COMMISSION PROPOSAL**

The Council of Ministers adopted Directive 93/104/EC on certain aspects of the organisation of working time on 23 November 1993. Certain sectors and activities are excluded from the scope of the Directive. These are air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training.

The proposal was part of a package of measures seeking to protect workers not currently covered by Directive 93/104/EC against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working patterns. This particular proposal sought to amend that Directive to cover all non-mobile workers, as well as mobile workers in the rail sector, and to make certain provisions in respect of other mobile workers.

### 3. COMMENTS ON COMMON POSITION

#### 3.1. Brief general observations on Common Position

The Common Position follows the Commission's proposal fairly closely, except in 3 important respects:

- (1) The transitional provisions in respect of **doctors in training**;
- (2) The adoption of specific provisions in respect of **seafishermen**;
- (3) The **implementation period**.

The Council reached its position unanimously. The Commission did not agree with the solutions adopted and maintained its original proposal on these points.

#### 3.2. Parliament's amendments on first reading

The Council in its Common Position adopted nine amendments proposed by the Parliament and accepted by the Commission (amendments numbered 1 to 8 and 10). These all concern the recitals. In addition the Commission accepted amendments numbered 11 and 16 (definition of and reference to "share-fishermen") and 13 (deletion of a specific reference to "doctors in training" in the derogations), but these were not accepted by the Council. The references to "share-fishermen" are redundant in the Council's approach, given that the Council has deleted the proposed exclusion of share-fishermen from the annual leave provisions. The Council preferred to keep the specific reference to "doctors in training" in the derogations. The Commission has an open position on this last point, because while it clarifies the possibility for derogation, it is not essential.

The Parliament wished to delete the reference in the derogations to railway staff on board trains. The Council removed this reference, but introduced a new point - Article 17.2.1(e)<sup>1</sup> - in respect of railway staff. This reflects more closely the wording of the agreement between the social partners in the railway sector. The Commission supports this change.

Neither the Commission nor the Council accepted the Parliament's amendment n° 19. This would have had the effect of reducing the protection available to urban rail transport workers, by treating them the same way as mobile urban road transport workers (the Commission has made a separate proposal in respect of mobile road transport workers). In its Common Position, the Council has, however, made clear that derogations applicable in the case of "activities involving the need for continuity of service" (Article 17.2.1(c)) can be applied to urban transport workers not covered by Article 17A (i.e. to urban rail transport workers). The Commission supports this change.

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<sup>1</sup> The articles referred to in this document are those in Directive 93/104/EC, unless otherwise stated. The recitals referred to are those in the proposal to amend the Directive

### 3.3. Comments on main changes

#### 3.3.1. *Doctors in training*

The Commission proposed that all provisions of the Working Time Directive would apply to doctors in training. However it proposed to allow a transitional period of seven years from the date of adoption for implementation of the 48-hour maximum weekly working time on average, where there is an agreement between the employer and workers' representatives. This would be subject to a maximum of 54 hours a week on average over a reference period of 4 months. The Parliament supported the Commission's approach but voted for a transitional period of 4 years. The Common Position provides for a three stage transitional period, with maxima of 60, 56 and 52 hours, over nine years. This is in addition to a four-year implementation period, i.e. a total of 13 years. In addition, the Common Position contains an obligation for the employer to consult the representatives of employees with a view to reaching agreement. It also provides for a reference period of up to 12 months in the first part of the transitional period and up to 6 months thereafter. The Commission did not accept either the Parliament's amendment or the Common Position on this matter: it continues to believe that its original proposal provides a good balance between the needs of hospital authorities to plan the necessary changes and the need to reduce the working time of doctors in training to an acceptable level as quickly as possible.

#### 3.3.2. *Sea-fishermen*

The Commission proposed that mobile workers in sea fishing would have a guarantee of adequate rest and a limit on the maximum number of hours to be worked annually. Except in the case of share-fishermen, they would also be covered by the Directive's provisions on 4 weeks' paid annual leave and certain basic provisions for night workers and shift workers, including health assessments. In addition, the Commission intended to make a separate specific proposal for a Directive on the working time and rest periods of sea-fishermen (as well as arrangements for paid leave for share-fishermen). The Council has taken a different approach. It has introduced a new article (17B) containing minimum provisions in respect of these workers. These include a provision for adequate rest and provisions adapted from the seafarers' agreement<sup>2</sup> regarding minimum hours of rest or maximum hours of work to sea-fishermen. Similar possibilities for exception are allowed. These provisions are to be reviewed not later than nine years from the date of adoption of the Directive (Article 2A of the amending Directive). The Council also agreed to apply the annual leave provisions of Directive 93/104/EC to "share-fishermen", who are employees, while underlining (Recital 13) that it is for Member States to determine, pursuant to Article 7 of that Directive, the conditions for entitlement to, and granting of such

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<sup>2</sup> 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 (COM (1998) 662 - 98/0320 (PRT))

leave, including the arrangements for payments. The Directive does not apply to self-employed workers. The Commission did not accept these changes, because it continues to believe that arrangements tailored to the needs of the sector would be more appropriate.

### *3.3.3. Implementation period*

The Council agreed a four-year implementation period, instead of the two years proposed by the Commission.

### **3.4. Other changes introduced by the Council**

The Council made a number of other detailed changes (other than consequential changes, in particular to the recitals). These concern the definitions of "adequate rest" and "offshore work", a clarification of Article 14 (more specific Community provisions) and changes to the derogations, including clarification that derogations from the provisions relating to adequate rest can be allowed in case of "force majeure" etc. (Article 17A.2). The Commission accepted these changes.

## **4. CONCLUSION**

The Commission welcomes the fact that, like the Parliament and the Economic and Social Committee, the Council has reached a Common Position in good time, which is broadly supportive of the Commission's proposal and general approach. The Commission regrets, however, that the Council did not follow the Commission's balanced proposal in respect of doctors in training, sea-fishermen and the implementation period - see paragraph 3.3 above. It cannot accept these elements of the Common Position.