

# European *Social* dialogue

European Commission Delegation

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## Working time and excluded sectors

### Protecting the health of millions of workers

**O**n 18 November 1998 the European Commission adopted a set of proposals concerning more than five million workers who were excluded from the working time directive. The principal inspiration for these proposals came from the discussions and agreements between the social partners. As such, they represent major progress for sectoral social dialogue.

- Which sectors are concerned? What problems are raised?
- What were the stages in this long process of consultation and negotiation?
- What agreements have been reached in the sea transport and railway sectors?
- How was the Commission able to take the initiative when faced with the inability of the social partners to reach agreement in the sea fishing and road transport sectors?

We decided to devote this December 1998 edition of the Newsletter to the important subject of "Working time and excluded sectors".

Excessively long working hours, inadequate rest periods or disruptive working patterns can have a negative effect on the health and safety of workers, as recent actions by the transport unions have once again highlighted. This is why, on 18 November 1998, the Commission adopted a set of proposals designed to protect the health of workers excluded from Directive 93/104/EC on working time. These measures concern more than 5 million workers employed in air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training. Being largely based on the discussions and agreements between the social partners, these proposals also mark significant progress for sectoral social dialogue. The agreement between the sea transport social partners is included as such in the Commission's proposals and could well become the first sectoral agreement implemented under the provisions of Article 4 of the Agreement on Social Policy. In the road transport sector, on the other hand, where the partners were unable to reach agreement, the Commission has based its proposal on the points of convergence which were present. The proposals for road and sea transport suggest more specific rules than those of Directive 93/104/EC for mobile workers in these sectors. This

approach allows the regulations governing the protection of health and safety in the field of working time to also take into account the operational and safety considerations of transport in each sector and to ensure coherence with Community legislation (in particular on driving time regulations) and international regulations (for the maritime sector). These proposals will be followed at the appropriate time by separate sectoral proposals for mobile workers employed in civil aviation, inland waterways and sea fishing. Mr Pádraig Flynn, Commissioner responsible for employment and social affairs, and Mr Neil Kinnock, Commissioner responsible for transport, affirmed that these proposals would guarantee the adoption of minimum standards for working time for all workers in the EU. "This is an important day for the millions of workers who found themselves excluded from the field of application of the original directive," stated Mr Flynn. "This also shows that the Commission and its social partners are able to work together in defining standards which meet our health and safety objectives, while retaining the operating flexibility which is necessary for these regulations to prove effective."

Allan Larsson  
Director General DGV

Employment & social affairs



European Commission

# A long process which is now bearing fruit

*In 1993, a Community directive effectively regulated the complex issue of working time in the majority of areas. However, an exception was made for certain specific fields of activities - principally transport and fishing - which became known as the "excluded sectors". The 1997 White Paper devoted specifically to such sectors made it possible to analyse their particular characteristics and to propose a basis for discussion between the social partners. This huge task is now beginning to bear fruit.*

"The completion of the single market must lead to an improvement in living and working conditions." This objective, as laid down in the Community Charter on the fundamental social rights of workers, is made explicit in the various provisions on working time, health and safety. Adopted by the heads of state and government of the Union on 9 December 1989, this charter marks a basic commitment to creating a social Europe.

## A directive and its exclusions

The fundamental question of working time subsequently became a legislative proposal rather than an ethical recommendation. Directive 93/104/EC concerning certain aspects of the organisation of working time was adopted in 1993 in order to combat the negative effects on health and safety of excessively long working hours, inadequate rest periods or disruptive working patterns. This laid down daily and weekly rest periods, breaks and annual leave, as well as including specific provisions on night work and shift work. Although the Commission had intended this directive to apply to all economic activities (while allowing for "a certain flexibility in the application of certain provisions" and possible "derogations"), the Council did not adopt this blanket proposal and decided that certain fields should be excluded, in particular because they require their workers to work a long way from home and during specific periods. Transport (air, sea, inland waterways and lakes, rail, road), sea fishing and other maritime activities - such as the offshore sector - as well as the activities of doctors in training, have subsequently become "excluded sectors", lying outside the directive's field of application.

## The analysis of the White Paper

In 1997, the Commission - which had given an undertaking to the European Parliament that it would take initiatives on the organisation of working time in these fields - published a White Paper on those sectors and activities which were

excluded from the working time directive. This analysis provided a basis for debate between the relevant social partners, representing 5.6 million jobs in the excluded sectors.

In particular, the White Paper highlighted the limits of a uniquely sectoral approach to the exceptions to the working time directive. The excluded sectors also employ a sometimes significant number of workers in sedentary occupations (the distinction made by airlines between aircrew and non-aircrew is explicit in this respect). In the White Paper, the Commission expresses the view that there is "no objective reason justifying different treatment for non-mobile workers compared to workers who carry out similar tasks in other sectors. It would be more appropriate to apply a criterion linked to the nature of the activity and not to a definition of the sector to which the worker belongs."

The present situation of workers employed in an excluded sector also varies considerably from one Member State to another. The Directive on the organisation of working time has been transposed into national legislation and there are often additional collective agreements. Nevertheless, in these excluded sectors, certain Europeans "benefit from no protection against excessively long working hours or guarantee of adequate rest periods".

## Consultation and conciliation

The White Paper was widely distributed, triggering a lively response from the social partners in the excluded sectors. The Commission took these into account when, on 31 March 1998, it submitted a second two-part consultation document:

- Part one presented a draft framework for amending the directive which sought to "horizontally" extend all the provisions to apply to non-mobile workers and to offer guarantees in terms of working time to mobile workers in the various excluded sectors.
- Part two dealt with the necessary sectoral legislation "to give sufficient protection to the health and safety of mobile and offshore workers".

These proposals served to relaunch nego-

tiations in the sectors concerned, which lasted throughout 1998. On 30 September, the sea and rail transport partners reached agreement on the organisation of working time for mobile workers (see article below).

## A horizontal directive

On completion of this second stage in the consultation process, last autumn, the Commission adopted the proposal for the "horizontal" directive which covers all the excluded sectors. The main effect of this Directive will be to:

- extend all the provisions of the 1993 Directive to all non-mobile workers in the excluded sectors - road, rail, sea, air and inland waterways, and lake transport and fishing. This measure is also extended to mobile railway workers - allowing for the derogations included in the directive - and to doctors in training and the offshore sector;
- apply four provisions to all mobile workers in these sectors: maximum number of working hours annually, annual paid leave, guarantee of adequate rest periods, health assessment for night workers. ■

### Airlines

## Flight crew agreement

*The door still remains open for an agreement covering some 75,000 mobile workers in the air*

EU airlines employ about 375,000 people. 80% of these are "ground" workers and are covered by the provisions of the working time directive currently before the Council.

The Commission is preparing proposals on FTL (Flight Time Limitations). The fatigue caused by a combination of long-haul flights and time differences - and stress which are an inherent part of the job (in which it is crucial to be in full control of all your faculties at all times) can have consequences not only for the crew but also for passenger safety.

# Sea transport

## When an agreement becomes law

*Social dialogue is a reality. Proof of this lies in the agreement concluded on 30 September 1998 on the organisation of working time for sea transport crews. This agreement allows the Commission to present a proposal for a directive which will soon give legal force to the proposed provisions.*

When working at sea you live far from home in a closed world for weeks or even months at a time. Vessels travel seven days a week and 24 hours a day. The working time requirements for seafarers are clearly very specific compared to those for land-based workers. They pose health problems for the crews and often also raise important safety questions. But competition in this sector – global before all the others by its very nature – is very fierce. The fleet flying the flag of an EU Member State lost 30% of its workforce between 1985 and 1995 <sup>(1)</sup> due to competition from vessels of non-member countries.

In legal terms, sea transport is largely governed by international conventions, including those of the International Labour Organisation (ILO). In 1996, this adopted Convention 180 which sets maximum levels for working hours and minimum levels for rest periods (see enclosure). Monitoring is provided by another mechanism (Protocol to Convention 147) which makes it possible to ensure that these provisions are applied to all vessels – whatever flag they fly – operating in EU waters.

The 1997 White Paper, followed by a sec-

ond consultation by the Commission with the social partners in March 1998, led to intense dialogue between the Federation of Transport Workers' Unions in the European Union (FST) and the European Community Shipowners' Associations (ECSA). These discussions led to an agreement which gives substance to the ILO's recommendations and which will be adopted by means of the "Social Protocol" annexed to the Maastricht Treaty. This agreement can then be confirmed by means of a European directive for which the Commission has already transmitted its proposal to the Council of Ministers for adoption in the near future.

(1) In 1995, there were just 162,000 seafarers employed under the flag of a Member State.

## Clear regulations applicable to seafarers

The agreement of 30 September 98 – and the directive currently proposed by the Commission – applies to all seafarers on board vessels registered in a EU country. It lays down:

- a maximum of eight hours work a day, in principle;
- maximum working hours which may not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period, or minimum rest hours which may not be less than 10 hours in any 24-hour period and 77 hours in any seven-day period <sup>(2)</sup>;
- one day off a week and days off for public holidays;
- at least four weeks, annual paid leave.

Also, no seafarer aged under 18 may work at night, and the minimum age for crew members is 16.

This agreement is accompanied by other legal instruments which guarantee effective monitoring of the implementation of the ILO Convention by vessels registered outside the EU which put into ports in the Member States. ■

(2) Rest hours may not be divided into more than two periods. One of these will be at least six hours and the period between two consecutive rest periods may not exceed 14 hours.

## Railways Agreement on three derogations

The EU's railways employ almost a million people, of which some 20% work on board trains. Working conditions are regulated by a number of national collective agreements in a sector with a long tradition of social dialogue.

With regard to working time, in September 1996 the social partners taking part in the Joint Committee on Railways reached a consensus on the principle of applying the provisions of the 1993 directive to both mobile and non-mobile staff, provided specific amendments were made to the derogations. This position was made concrete last September following the consultation process initiated at European level. The agreement of 30 September 98 proposes to use the derogations under Directive 93/104 (Article 17) which are to be settled by means of subsidiarity. These concern:

- "activities for which working time is not measured and/or predetermined";
- persons whose "working time is spent on board means of transport" – in other words, mobile workers whose place of work and place of residence are distant from one another;
- activities linked to transport timetables and ensuring the continuity and regularity of traffic, for which continuity of service must be guaranteed.

In order to avoid intermodal competition, the social partners asked for the agreement to enter into force when similar agreements – or a legislative act of the Council – cover all the excluded transport sectors.

## t pending

on working time for  
port sector.

its White Paper, the Commission takes the view that of the four provisions which will apply to mobile personnel, "only those concerning the daily rest period and breaks could cause problems" – problems which can be easily overcome under the derogations allowed by the directive. The sector's social partners are currently engaged in dialogue on the organisation of working time and could still reach an agreement.

## Road transport workers

### Getting things moving

Last September, the social partners in the road transport sector narrowly failed to reach agreement. Regretting this failure in an area where problems linked to working time are a particularly sensitive issue, the Commission decided to submit its own proposals.

The road transport sector employs almost 6.8 million workers, including 5 million "mobile" workers. Almost half of the latter are self-employed and are already covered by the Directive. Driving and rest periods for all drivers is governed by sectoral Community legislation (Regulation (EEC) No. 3820/85), the aim of which is to harmonise conditions of competition between transporters, increase road safety (which is why it does not only apply to employees) and improve general working conditions. However, as Regulation 3820/85 is only concerned with driving and rest periods, it does not set any maximum on working time which sometimes includes activities such as loading and unloading, that can be both long and tiring. It also includes many exclusions and possible derogations.

In its White Paper on the excluded sectors, the Commission recognised the difficulty of applying the terms of the Directive to uninterrupted daily rest periods for long-distance lorry drivers, but did not see any reason why annual leave, health assessments and a limit on the maximum number of working hours a year should pose a problem. There have been numerous discussions between the IRU - International Road Transport Union - and the FST (Federation of Transport Workers' Unions) since this document was published. Discussions on 30 September 1998 on draft agreement were unsuccessful. This was the deadline set by the Commission for submitting contributions. Under this draft agreement, the weekly working time for mobile workers would have been set at 48 hours, increasing to 60 hours only if the average of 48 hours is not exceeded over a four month period.

Disappointed at this failure, the Commission decided to "submit its own proposals which naturally take into account the points of convergence which have emerged during recent discussions" - in particular, the inclusion in working time of activities other than driving. The stillborn agreement between the social partners will therefore be converted into proposals to the Council, ultimately leading to sectoral European legislation.

# Sea fishing

## The Commission takes the initiative

*A special socio-economic structure, a dangerous job, work determined by the environment... and a social dialogue which has developed very unevenly in the various Member States.*

*As it proved impossible to reach agreement on working time between the European social partners in this sector, the Commission is preparing a specific proposal for sea fishing, which will amend the 1993 Directive.*

270,000 fishermen. 100,000 vessels operating under the flag of an EU Member State, 85% of which are less than 12 metres long and operate with a maximum of three crew. A small number of workers on the quayside, responsible for unloading the catch. All of which means mobile and non-mobile workers, with neither category benefiting from the provisions of the working time Directive.

### Seafaring traditions

Many fishermen are paid on the basis of a "share" in the revenue from a fishing trip. One share goes to maintaining the vessel, another to the owner, and a third goes to the crew members. As a result, the traditional employer-employee relationship often does not apply to the fishing sector. And working time is also determined by the way the fishing is going - if it is going well it is difficult to suddenly call a halt. Also, who would deny that this is a dangerous job? 158 EU vessels were wrecked in 1996 and the number of accidents totalled 1,250. 42% of these were due to human error - fatigue being a major factor no doubt.

The question is, given such conditions how is it possible to stipulate rest periods? Over what period should working hours be calculated? How is it possible to distinguish between "working time at sea" and "time spent at sea"? Should a distinction be made between 24-hour expeditions for coastal fishing and trips lasting two or three weeks for deep-sea fishing?

### Very slow progress

A great many collective agreements, both national and regional, and including many derogations - most notably due to *force majeure* - govern this sector. There is

no European regulation governing working time here. In 1995, the FST (Federation of Transport Workers' Unions) drew up a proposal to adapt the 1993 Directive to the fishing sector. This text brought no response from the employers' representatives (EUROPECHE/COGECA) - who see themselves as representing the majority of fishermen. The Commission believes that "any legislation on working time in the sea fishing sector must apply to all fishermen on board". Several attempts have been made since 1993 to set up working parties in order to look at the content of these proposals and to consider the scope for negotiating a working time agreement. But with little result.

### Europe takes the initiative

The employers proved equally unresponsive to the opinion issued in February 1998 by the European Parliament's Committee on Fisheries - an opinion which supported the Commission's strategy as set out in its White Paper. At the meeting of the Joint Committee on 11 May 1998, the FST presented the employers' delegation with its proposal for applying the directive in detail, article by article, for the first time. Unfortunately, no agreement resulted. EUROPECHE/COGECA was unable to receive the mandate from its national members which would have allowed it to negotiate on this basis.

The Commission therefore decided to take the initiative. DGV - at the origin of this action - and DGXIV fisheries are at present preparing a proposal on working time for fishermen which will take account of the sector's very specific characteristics. The aim is to guarantee health and safety rights for all workers in this sector.

### European Social Dialogue

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#### ■ Published by :

DGV/D1,

European Commission

Fax: 32/2/299 24 66

#### ■ Contacts :

Walter Faber 32/2/295 03 77

Koen De Vos 32/2/296 25 90