

Draft minutes

SSDC Inland Waterways 29rd September 2021

1. Adoption of the agenda

The agenda of the meeting was approved.

2. Adoption of the draft minutes of the last SSDC meeting of 23th April 2021 and the SSDC meeting of 15th January 2021

The Committee decided to approve the Minutes of the previous two meetings tacitly, if no comments were received within two weeks from the meeting.

3. Information by the Commission

COM (DG MOVE) updated the Committee with regard to the Directive on professional qualifications (transposition deadline in January 2022), digital tools and the legislative Fitness check for the sector. On the Fitness check, COM has currently an intermediate report and is preparing an open public consultation that would be duly notified to the social partners. Naiades 3, an important communication for this sector, was released at the end of June 2021 and sets the EU strategy relevant for inland waterways for the upcoming years. It includes a component on more attractive and sustainable jobs in inland waterways transport and, as a flagship measure, another component referring to smart and flexible crewing rules at EU level.

DG EMPL updated the Committee on its work on the (general) Working Time Directive 2003/88/EC. COM is preparing the latest five-yearly report on the implementation of the Directive and in summer 2021 launched a call to Member States and EU level social partners to provide inputs. The report is expected to be adopted in Q4 2022. As for the specific Inland Waterways Transport Working Time Directive 2014/112/EU, the COM has assessed the implementing measures notified by Member States and will soon launch detailed dialogues with 16 Member States to clarify various aspects of these measures. Moreover, of nine Member States which had applied for a geographical exception from the Directive, the Commission has already launched a dialogue with two of them and will shortly launch dialogues with the remaining seven. The social partners expressed their wish to be involved in the detailed dialogues with the Member States. COM explained that this is not possible given that verifying the transposition of EU law must be done on a bilateral basis between the COM and each Member State concerned.

4. Update on the working groups: Registration of working time

With regard to the registration of working time, EBU and ESO mentioned that it discussed the presentation given by ETF at the last meeting, with their members. The next step is to add their experience and feedback and resume discussions in the working group.

Coordination on social security and the working group posted workers directive.

The work of the working group on coordination of social security rules and posting of workers continues. The social partners put together a note (memo) based on which they intend to feed into the ongoing legislative Fitness check.

5. IWT Legislative Fitness check

- Follow up important parts/items in the Fitness Check (discussed together with point 2, see above).
- Presentation on posting of workers/Posted Workers Directive.

COM (DG EMPL) gave a presentation of the most common questions related to posting of workers, including relevant case-law. The mobile nature of work in IWT may give rise to specific legal questions; the link between the worker, the activity and the member state where work is performed takes a new meaning in this sector.

A "posted worker" is an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency. The personal scope of the Posting of Workers Directive 96/71/EC (as amended) is set out in Article 1 (1) and (2). The Directive applies to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers to the territory of another Member State. It does not apply to merchant navy undertakings as regards their crew. Crewmembers in inland navigation are not mentioned in paragraph (2) and may therefore fall within the scope of the Directive. So far, this interpretation has not been questioned. In general, the host Member State is considered to be the one where the services are provided and can be changed during the posting. Several judgements of the Court of Justices of the EU can serve as inspiration when interpreting posting rules, briefly mentioned below. It has to be noted however, that the interpretation given by the court is limited to the case as described in the operative part of the judgment and therefore, for full details the reader is referred to the considerations of those judgements.

- [C-16/18 Dobersberger](#) (which considers services provided on international trains) where the Court found that the workers in questions were not considered to be posted to Austria as the performance of their work did not have a sufficient connection with that territory.
- [C-815/FNV](#) the Court recalled that for the worker to be regarded as being posted to the territory of a Member State, the performance of his or her work must have a sufficient connection with that territory. The existence of such a connection is determined in the context of an overall assessment of several factors. The Court also found that cabotage operations which take place entirely within the territory of the host Member State, have a sufficient connection with that territory.
- [C-784/19 Team Power Europe](#) (in the context of the social security coordination regulations), where the Court concluded that a temporary-work agency established in a Member State must, in order for it to be considered that it 'normally carries out its activities' in that Member State, carry out a significant part of its activities of assigning temporary agency workers for the benefit of user undertakings established and carrying out their activities on the territory of that Member State. Meaning that only recruitment activity (without putting the workers at the disposal of the user undertakings in the MS of establishment) is not to be considered "substantial business activity" in case of a temporary work agency.
- [Case C 610/18 \(AFMB\)](#), where the Court decided that the employer of an international long-distance lorry driver is the undertaking which has actual authority over that long-distance lorry driver, which bears, in reality, the costs of paying his or her wages, and which has the actual power to dismiss him or her, and not the undertaking with which that long-distance lorry driver has concluded an employment contract and which is formally named in that contract as being the employer of that driver.

The social partners explained how the same company regularly performs its activity in several Member States, their ships travelling through different countries, each ship employing workers of several different nationalities. Workers may switch ships once or several times during their working day or during the trip undertaken by a ship. It is often difficult to establish the law applicable to the employment relationship itself, let alone establishing whether a worker is posted or not. In their view, the current rules are suitable for more static sectors and are difficult to apply in inland waterway transport.

6. Work plan SSDC 2022-2023

The committee adopted its work plan for the next two years (attached).

7. CESNI Crew – Update state of affairs future crewing regulation

The CESNI working group for crew relating requirements met in September to work on a draft roadmap that will be presented to the CESNI Committee in October. Further comments can be submitted after that meeting. Completion of the roadmap will be one of the tasks for the next CESNI work programme for 2022-2024. A relevant sector consultation is scheduled on 14 December and will focus on the scope of the European crewing requirements, on the use, advantages and disadvantages of operation modes and also address the issue of flexibility (e.g. criteria to be added to manning tables, updates of crewing requirements and EU and CCNR level).

8. Impact of corona restrictions on the free movement of crew members

Most of the restrictions to the free movement of IWT crewmembers have been addressed. The social partners underlined that the Covid-19 crisis showed how important European agreements, coordination and working together is, considering that times like the current crisis demonstrate the value of international institutions. They expressed the hope that the general situation of the pandemic will soon improve.

9. State of affairs CCNR

Work on the harmonisation of examination procedures continues with a view to achieving a common European level playing field in examinations; this includes work on digital learning tools simulators. A Consultative Conference would take place in October and the Plenary meeting on 2 December. While CCNR's representative expressed optimism with regard to the development of such tools in all the countries participating, he also mentioned that this project would take longer to materialize.

10. Information on research and projects (see attached ppt)

The social partners made a presentation of the **Naiades III action plan 2021-2027** (focused on greening of the sector), the **Report on The European inland navigation sector labour market** (Important viewpoints for Platina Workpackage 3 - www.inland-navigation-market.org) and **Platina 3** (Jobs and skills - introduction on the topic particularly on the tasks 3.2 (input for refresher classes for environmentally friendly vessel operation) and 3.4 (operation of systems of automation)).



11. The social dimension of automation in European IWT

The presentation on the highlights of the Study on the social dimension of the transition to automation and digitalization in transport and was postponed to the next meeting.

12. AOB

The next meeting of the committee is scheduled for 21 January 2022 (online). Hybrid meetings are possible, subject to national restrictions and COM requires the Covid-19 green certification to allow access to its buildings.