



EUROPEAN COMMISSION

DG Employment, Social Affairs and Inclusion

Employment and Social Legislation, Social Dialogue
Social dialogue, Industrial Relations

Brussels, 27 April 2011

**SECTORAL SOCIAL DIALOGUE
COMMITTEE
INLAND WATERWAYS**

Minutes Meeting of 2 February 2011

1. Adoption of the agenda and approval of the minutes of the previous meeting

The meeting was chaired by Mr Koning (employers). The agenda was adopted. The minutes of the previous meeting (24 November 2010) were approved.

2. Progress on implementation of the work programme 2009-2010¹

Working time

Time constraints meant that item (a) (working time) was the only item discussed again in detail. The remaining items on the agenda were reserved for a later date.

Participants were informed of the progress made at the drafting group meetings on 15 December 2010 and 20 January 2011. The latest version of the work programme, now available in several languages, dated from 20 January (result of the last drafting group meeting). Prior to the current meeting, the employers had submitted a written proposal for a new recital (10) (available in DE only). The purpose of the explanatory comments was not to alter the definition of working time but to establish clarity and prevent cases where workers operate on a freelance basis so that the employer can avoid paying social security contributions (a fear expressed by workers' representatives). The ETF pointed out that when workers were assigned to a particular category by the authorities, this should be verifiable. After some discussion about the specific nature of the inland waterways sector and special features of social security legislation (e.g. in Belgium), the employers revised their proposed text as follows:

Many medium-sized companies in the inland waterways sector are family run. This means that relatives of the company owner (spouses, parents, children and siblings) or partners of a legal entity or members of a partnership may also be company owners. Because of national laws in the countries concerned, this

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http://circa.europa.eu/Public/irc/empl/sectoral_social_dialogue/library?l=/inland_waterways/2010&vm=detailed&sb=Title

sometimes makes it difficult to distinguish between the status of a company owner and that of a worker. The social partners therefore agree that a person's status as a company owner or worker should not be established by means of formal criteria (e.g. employment contract, social security status or the form of the company under company law) but on the basis of material observation. Key criteria in this regard are whether, under national law, the person concerned plays an instrumental role in the capital risk, management, success and failure of the company.

The ETF stated that it agreed with this revised version of the new recital.

With reference to paragraph 1 of the agreement, the ETF prompted a discussion about the term "owner operator" (in NL "*eigenaar*"). The social partners decided not to use this term. The definition needed to cover ship operators², whether or not they owned the ship. The ETF also proposed that the text should refer to existing and future legislation on rest periods for crew members. Consideration was given to carrying out a closer examination of clause 8 of the social partner agreement in the civil aviation sector³.

The ESO pointed out that, in paragraph 13, powers should be granted not only to the shipmaster but also to any representative he might have. This was incorporated into the text.

Further aspects were discussed, such as the possibility of a model for paragraph 12 (checks), as well as the advantages and disadvantages of a stipulation of this kind, and the question of whether people undergoing training were workers⁴, whether this should be explicitly mentioned in the agreement, and what impact this would have on the level of protection during night-time hours.

The partners decided who would be responsible for expanding or rewording which pieces of text and agreed to meet when attending another meeting scheduled for the end of the week.

The Commission's representative asked the social partners to submit an official joint request for the final version of the agreement to undergo legal examination by the Commission.

² Person who operates a ship (FR "*exploitant*").

³ <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=206>

⁴ Definition in Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work: worker: any person employed by an employer, including trainees and apprentices but excluding domestic servants (Article 3, emphasis by DG EMPL)

3. Work programme 2011-2012

The parties agreed to adopt their new work programme at the meeting in April. The ETF stated that it was prepared to draw up a draft work programme beforehand. The ESO suggested that consideration could be given to carrying out a study which would give the social partners a comprehensive overview of the employment and social security legislation applicable in each country.

4. Miscellaneous

The ETF referred to the joint declaration issued by the EBU and the ESO concerning the tanker which capsized in the Rhine on 13 January. The workers proposed that a joint declaration could be considered which would examine more closely the social implications of an incident of this kind (e.g. the supplying of food to vessels whose progress was delayed by the accident, the employer's responsibility for his workers and the way in which the deaths of crew members killed in accidents are reported in the media). The ETF acknowledged that it was too late to issue a statement on the accident itself but felt that thought should be given to being better prepared for similar situations in future. The ETF proposed drafting a long-term paper on this subject.

Participants 2.2.2011

Employers (6 ♂, 2 ♀)

EBU

Mr Dalaise (FR)

Mr Koning (NL)

Mr Naaborgh (NL)

Mr Van Den Abbeele (BE)

Ms Wenkel (DE)

ESO

Ms Beckschäfer (DE)

Mr Van Lancker (BE)

Mr Veldman (NL)

Workers (6 ♂, 3 ♀)

ETF

Mr Bramley (ETF)

Ms Chaffart (ETF)

Mr Jerabek (CZ)

Mr Kerkhofs (BE)

Ms Kostova (BG)

Mr Kronbergs (LV)

Mr Lalak (CZ)

Ms Latron (FR)

Mr Pauptit (NL)

European Commission

Ms Durst (DG EMPL)

Others

Ms Tournaye (CCNR) - observer