



## EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social dialogue, social rights, working conditions, adaptation to change  
**Social dialogue and industrial relations**

### SECTORAL SOCIAL DIALOGUE COMMITTEE INLAND NAVIGATION

#### Meeting of 17 June 2010 Minutes (adopted on 24 September 2010)

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

Until the arrival of the committee's chairman Mr Koning (employers), the meeting was chaired by Vice-chairman Mr Lehninger (workers). The agenda and minutes of the previous meeting (27 November 2009) were adopted. ESO asked to be kept posted on the developments in Belgium mentioned in these minutes.

#### 2. Legal questions relating to the drafting of the agreement on working time

Mr Breczewski from DG EMPL's Labour Law Unit replied to the legal questions submitted by the social partners' drafting group beforehand (see annex).

Question 1: Is it possible for our agreement to be converted into a final arrangement on the basis of Article 14 of Directive 2003/88/EC, so that the general directive would no longer apply in a subsidiary manner to mobile workers on inland waterways? Does this possibility exist for all the directive's provisions, or only for those mentioned in Article 20(1), i.e. Articles 3, 4, 5 and 8?

Article 14 of Directive 2003/88/EC responds to this question stating that: "This directive shall not apply where other Community instruments contain more specific requirements relating to the organisation of working time for certain occupations or occupational activities". Obviously, the precondition for Article 14 to apply is that the agreement actually becomes a Community instrument. In this context an implementation via Article 155 paragraph 2 of the TFEU (a Council decision on a proposal from the Commission would be necessary).

The possibility under Article 14 of Directive 2003/88/EC is not restricted to any particular provision and therefore is potentially applicable to the whole Directive.

Question 2: If we enter into an independent final agreement, the question arises as to the correct way to take over the provisions from the general working time directive which remain unchanged in substance, and their exact wording: e.g.: 'Member States shall take measures, etc.' How can we take over these provisions in an appropriate way?

The social partners might wish to take over parts of the regulations of Directive 2003/88/EC. Even though the most suitable solution can only be assessed on case by case basis, potentially several possibilities exist. Firstly, an express reference to articles of Directive 2003/88/EC might be envisaged; secondly, a transcription of the relevant paragraphs of Directive 2003/88/EC within the agreement of the social partners; finally a generic reference to Directive 2003/88/EC could be made for all the matters not covered by the agreement.

In the interests of clarity and transparency, the second solution may be preferable (for example, in case the text of Directive 2003/88/EC should undergo any amendment in future).

Question 3: Answering this question would require an article by article analysis.

Question 4: A specific directive is to be transposed into European law, and questions of interpretation must then in principle be answered by the European Court of Justice. Which possibilities do the social partners have to express their opinions about questions of interpretation?

This concern has already been addressed in the past by the social partners in previous European agreements (e.g. the preamble of the framework agreement on part-time work states: "Without prejudice to the role of national courts and the Court of Justice, the parties to this agreement request that any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to them for an opinion"<sup>1</sup>). However, due to the extremely tight deadlines given to the Commission by the Court in order to present its opinion it might be technically unfeasible to consult the social partners in some cases (it should also be taken into account that the social partners might have different views). In this context it is crucial that the social partners make their best efforts to make the text of their agreement as clear as possible, furthermore they might consider the possibility of submitting (at the moment of concluding the agreement or at any point in the future, an interpretative document regarding their agreement). Such a document could be taken into account in case of any interpretative controversy that might arise in the future.

### **3. Information from DG MOVE**

Mr Dieter from DG MOVE reported on the latest developments: new White Paper to come; revision of the T-TEN guidelines; boat masters' certificate (social partners would be consulted); impact of the economic crisis. The Commission representative specified several points in response to the social partners' questions.

### **4. Progress on implementation of work programme**

Working time: The chairperson stressed that the joint document was not yet finalised and that the partners' objective was to provide an equivalent protection compared to the general working time directive. The workers' side mentioned different aspects to be taken into account. On the one hand, there were fears that when using the term "working time" in the agreement, one would not necessarily keep in mind the definition of this term for the agreement (which included on-call time). This could lead to a wrong picture of the

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997L0081:EN:NOT>

protecting level. The workers' side also reiterated the need to ensure that no abuse was possible: the current limits would theoretically allow for 372 hours working time (as defined for the agreement) per month and 186 hours night work. On the other hand, the 14-hour-limit was not higher than in the maritime sector, rest time arrangements were more favourable than for the maritime sector and the night work limits were more favourable than in the general working time directive. There was no agreement on whether a scientific report could assess the risks at this stage. The employers' side strongly recommended that the translation of the draft agreement be validated from a juridical point of view since its quality was not yet sufficient. The chairperson concluded that against the background of a number of open questions (for instance on footnote 5 and passenger ships) the drafting group still had to deepen its work. A dedicated meeting was fixed for 27 July.

Job profiles: The participants were informed about the outcome of the PLATINA Joint Working Group on professional competencies (version 1.0 of professional competencies, see slide presentation). EDINNA would fill in the competencies tables by summer 2012. The social partners should decide on how they could contribute to this work. ESO was in favour of contributing and backed ETF's proposal to not forgetting other functions on board. It was agreed to let the Working Group decide how to define the social partners' tasks with this respect (next meeting: 24 June in Rotterdam).

The discussion on the other items of the work programme was postponed due to time constraints.

## **5. Any other business**

The social partners exchanged information on the current state of discussion within CASS (Zentrale Verwaltungsstelle für die Soziale Sicherheit der Rheinschiffer; Administrative Centre for the Social Security of Rhine Boatmen)<sup>2</sup>. The problem was not yet resolved but developments towards a draft agreement were promising.

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<sup>2</sup> <http://www.ccr-zkr.org/De/cass.htm>

## **Participants 17 June 2010**

### **Employers (5 ♂, 2 ♀)**

EBU

Mr Dalaise (FR)

Mr Koning (NL)

Mr Van den Abbeele (BE)

Ms Wenkel (DE)

ESO

Ms Beckschäfer (DE)

Mr van Lancker (BE)

Mr Veldman (NL)

### **Workers (7 ♂, 2 ♀)**

ETF

Mr Beyer (DE)

Mr Biesold (DE)

Mr Bramley (ETF)

Ms Chaffart (ETF)

Mr Delatronchette (FR)

Mr Jerabek (CZ)

Ms Komitova (BG)

Mr Lehninger (AT)

Mr Pauptit (NL)

### **European Commission**

Mr Brezewski (DG EMPL)

Mr Dieter (DG MOVE)

Ms Durst (DG EMPL)

**Legal questions**

**relating to the drafting of the agreement on working time**

1. Is it possible for our agreement to be converted into a final arrangement on the basis of Article 14 of Directive 2003/88/EC, so that the general directive would no longer apply in a subsidiary manner to mobile workers on inland waterways?

Does this possibility exist for all the directive's provisions, or only for those mentioned in Article 20(1), i.e. Articles 3, 4, 5 and 8?

2. If we enter into an independent final agreement, the question arises as to the correct way to take over the provisions from the general working time directive which remain unchanged in substance, and their exact wording: e.g.: 'Member States shall take measures, etc.' How can we take over these provisions in an appropriate way?

3. Our agreement is intended to provide a standard on protection of mobile workers on inland waterways that is equivalent to that under Directive 2003/88/EC.

Is it possible to convert our agreement on the basis of the draft dated 3 May 2010 into a sectoral directive?

4. A specific directive is to be transposed into European law, and questions of interpretation must then in principle be answered by the European Court of Justice. Which possibilities do the social partners have to express their opinions about questions of interpretation?

EBU, ESO, ETF

Brussels, 3 May 2010