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COUNCIL DIRECTIVE 1999/63/EC

of 21 June 1999

concerning the 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 (FST)

(OJ L 167, 2.7.1999, p. 33)

Corrected by:

► C1 Corrigendum, OJ L 244, 16.9.1999, p. 64 (1999/63/EC)



COUNCIL DIRECTIVE 1999/63/EC
of 21 June 1999

concerning the 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 (FST)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and, in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) following the entry into force of the Treaty of Amsterdam, the provisions of the Agreement on social policy annexed to the Protocol 14 on social policy, annexed to the Treaty establishing the European Community, as amended by the Treaty of Maastricht, have been incorporated into Articles 136 to 139 of the Treaty establishing the European Community;
- (2) management and labour ('the social partners'), may in accordance with Article 139(2) of the Treaty, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;
- (3) the Council adopted Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time⁽¹⁾; whereas sea transport was one of the sectors of activity excluded from the scope of that Directive;
- (4) account should be taken of the relevant Conventions of the International Labour Organisation with regard to the organisation of working time, including in particular those relating to the hours of work of seafarers;
- (5) the Commission, in accordance with Article 3(2) of the Agreement on social policy, has consulted management and labour on the possible direction of Community action with regard to the sectors and activities excluded from Directive 93/104/EC;
- (6) after that consultation the Commission considered that Community action was desirable in that area, and once again consulted management and labour at Community level on the substance of the envisaged proposal in accordance with Article 3(3) of the said Agreement;
- (7) the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) informed the Commission of their desire to enter into negotiations in accordance with Article 4 of the Agreement on social policy;
- (8) the said organisations concluded, on 30 September 1998, an Agreement on the working time of seafarers; this Agreement contains a joint request to the Commission to implement the Agreement by a Council decision on a proposal from the Commission, in accordance with Article 4(2) of the Agreement on social policy;
- (9) the Council, in its resolution of 6 December 1994 on certain aspects for a European Union social policy: a contribution to economic and social convergence in the Union⁽²⁾ asked management and labour to make use of the opportunities for concluding agreements, since they are close to social reality and to social problems;

⁽¹⁾ OJ L 307, 13.12.1993, p. 18.

⁽²⁾ OJ C 368, 23.12.1994, p. 6.

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- (10) the Agreement applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member State and is ordinarily engaged in commercial maritime operations;
- (11) the proper instrument for implementing the Agreement is a Directive within the meaning of Article 249 of the Treaty; it therefore binds the Member States as to the result to be achieved, whilst leaving national authorities the choice of form and methods;
- (12) in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; this Directive does not go beyond what is necessary for the attainment of those objectives;
- (13) with regard to terms used in the Agreement which are not specifically defined therein, this Directive leaves Member States free to define those terms in accordance with national law and practice, as is the case for other social policy Directives using similar terms, providing that those definitions respect the content of the Agreement;
- (14) the Commission has drafted its proposal for a Directive, in accordance with its communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement;
- (15) the Commission informed the European Parliament and the Economic and Social Committee, in accordance with its communication of 14 December 1993 concerning the application of the Agreement on social policy, by sending them the text of its proposal for a Directive containing the Agreement;
- (16) the implementation of the Agreement contributes to achieving the objectives under Article 136 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to put into effect the Agreement on the organisation of working time of seafarers concluded on 30 September 1998 between the organisations representing management and labour in the maritime sector (ECSA and FST) as set out in the Annex hereto.

Article 2

Minimum requirements

1. Member States may maintain or introduce more favourable provisions than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are adhered to.

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2002, or shall ensure that, by that date at the latest, management

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and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measure to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt the provisions referred to in the first paragraph, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by the Member States.

*Article 4***Addressees**

This Directive is addressed to the Member States.

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ANNEX

EUROPEAN AGREEMENT**on the organisation of working time of seafarers**

Having regard to the Agreement on social policy annexed to the Protocol on social policy attached to the Treaty establishing the European Community and in particular Articles 3(4) and 4(2) thereof;

Whereas Article 4(2) of the Agreement on social policy provides that agreements concluded at European level may be implemented at the joint request of the signatory parties by a Council Decision on a proposal from the Commission;

Whereas the signatory parties hereby make such a request,

THE SIGNATORY PARTIES HAVE AGREED THE FOLLOWING:

Clause 1

1. The Agreement applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member State and is ordinarily engaged in commercial maritime operations. For the purpose of this Agreement a ship that is on the register of two States is deemed to be registered in the territory of the State whose flag it flies.
2. In the event of doubt as to whether or not any ships are to be regarded as seagoing ships or engaged in commercial maritime operations for the purpose of the Agreement, the question shall be determined by the competent authority of the Member State. The organisations of shipowners and seafarers concerned should be consulted.

Clause 2

For the purpose of the Agreement:

- (a) the term 'hours of work' means time during which a seafarer is required to do work on account of the ship;
- (b) the term 'hours of rest' means time outside hours of work; this term does not include short breaks;
- (c) the term 'seafarer' means any person who is employed or engaged in any capacity on board a seagoing ship to which the Agreement applies;
- (d) the term 'shipowner' means the owner of the ship or any other organisation or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the attendant duties and responsibilities.

Clause 3

Within the limits set out in Clause 5, there shall be fixed either a maximum number of hours of work which shall not be exceeded in a given period of time, or a minimum number or hours of rest which shall be provided in a given period of time.

Clause 4

Without prejudice to Clause 5, the normal working hours' standard of seafarer is, in principle, based on an eight-hour day with one day of rest per week and rest on public holidays. Member States may have procedures to authorise or register a collective agreement which determines seafarers' normal working hours on a basis on less favourable than this standard.

▼B**Clause 5**

1. The limits on hours of work or rest shall be either:
 - (a) maximum hours of work which shall not exceed
 - (i) fourteen hours in any 24 hour period; and
 - (ii) 72 hours in any seven-day period;
 or
 - (b) minimum hours of rest which shall not be less than:
 - (i) ten hours in any 24 hour period; and

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- (ii) 77 hours in any seven-day period.

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2. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length and the interval between consecutive periods of rest shall not exceed 14 hours.
3. Musters, fire-fighting and lifeboat drills, and prescribed by national laws and regulations and by international instruments shall be conducted in a manner that minimises the disturbance of rest periods and does not induce fatigue.
4. In respect of situations when a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.
5. With regard to paragraphs 3 and 4, where no collective agreement or arbitration award exists or if the competent authority determines that the provisions in the agreement or award are inadequate, it would be for the competent authority to determine such provisions to ensure that the seafarers concerned have sufficient rest.
6. With due regard for the general principles of the protection of the health and safety of workers, Member States may have national laws, regulations or a procedure for the competent authority to authorise or register collective agreements permitting exceptions to the limits set out in paragraphs 1 and 2. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods, or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ship on short voyages.
7. A table shall be posted, in an easily accessible place, with the shipboard working arrangements, which shall contain for every position at least:
 - (a) the schedule of service at sea and service in port; and
 - (b) the maximum hours of work or the minimum hours of rest required by the laws, regulations or collective agreements in force in the Member States.
8. The table referred to in paragraph 7 shall be established in a standardised format in the working language or languages of the ship and in English.

Clause 6

No seafarer under 18 years of age shall work at night. For the purpose of this Clause, 'night' means a period of at least nine consecutive hours, including the interval from midnight to five a.m. This provision need not be applied when the effective training of young seafarers between the ages of 16 and 18 in accordance with established programmes and schedules would be impaired.

▼B**Clause 7**

1. The master of a ship shall have the right to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.
2. In accordance with paragraph 1, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored.
3. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarer who have performed work in a scheduled rest period are provided with an adequate period of rest.

Clause 8

1. Records of seafarers' daily hours of work or of their daily hours of rest shall be maintained to allow monitoring of compliance with the provisions set out in Clause 5. The seafarer shall receive a copy of the records pertaining to him or her which shall be endorsed by the master, or a person authorised by the master, and by the seafarer.
2. Procedures shall be determined for keeping such records on board, including the intervals at which the information shall be recorded. The format of the records of the seafarers' hours of work or of their hours of rest shall be established taking into account any available international guidelines. The format shall be established in the language provided by Clause 5, paragraph 8.
3. A copy of the relevant provisions of the national legislation pertaining to this Agreement and the relevant collective agreements shall be kept on board and be easily accessible to the crew.

Clause 9

The records referred to in Clause 8 shall be examined and endorsed at appropriate intervals, to monitor compliance with the provisions governing hours of work or hours of rest that give effect to this Agreement.

Clause 10

1. When determining, approving or revising manning levels, it is necessary to take into account the need to avoid or minimise, as far as practicable, excessive hours of work, to ensure sufficient rest and to limit fatigue.
2. If the records or other evidence indicate infringement of provisions governing hours of work or hours of rest, measures, including if necessary the revision of the manning of the ship, shall be taken so as to avoid future infringements.
3. All ships to which this Agreement applies shall be sufficiently, safely and efficiently manned, in accordance with the minimum safe manning document or an equivalent issued by the competent authority.

Clause 11

No person under 16 years of age shall work on a ship.

Clause 12

The shipowner shall provide the master with the necessary resources for the purpose of compliance with obligations under this Agreement, including those relating to the appropriate manning of the ship. The master shall take all necessary steps to ensure that the requirements on seafarers' hours of work and rest arising from this Agreement are complied with.

▼B**Clause 13**

1. All seafarers shall possess a certificate attesting to their fitness for the work or which they are to be employed at sea.

The nature of the health assessment to be made and the particulars to be included in the medical certificate shall be established after consultation with the shipowners and seafarers organisations concerned.

All seafarers shall have regular health assessments. Watchkeepers suffering from health problems certified by a medical practitioner as being due to the fact that they perform night work shall be transferred, wherever possible, to day work to which they are suited.

2. The health assessment referred to in paragraph 1 shall be free and comply with medical confidentiality. Such health assessments may be conducted within the national health system.

Clause 14

Shipowners shall provide information on watchkeepers and other night workers to the national competent authority if they so request.

Clause 15

Seafarers shall have safety and health protection appropriate to the nature of their work. Equivalent protection and prevention services or facilities with regard to the safety and health of seafarers working by day or by night shall be available.

Clause 16

Every seafarer shall be entitled to paid annual leave of at least four weeks, or a proportion thereof for periods of employment of less than one year, in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and or/practice.

The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated. Brussels, 30 Septembre 1998. Federation of Transport Workers' Unions in the European Union (FST) European Community Shipowners' Association (ECSA)