DIRECTIVE 2000/34/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 2000

amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive

THE EUROPEAN PARLIAMENT AND COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3], in the light of the joint text approved by the Conciliation Committee on 3 April 2000,

Whereas:

(1) Article 137 of the Treaty provides that the Community is to support and complement the activities of the Member States with a view to improving the working environment to protect workers' health and safety. Directives adopted on the basis of that Article are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

(2) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time [4] lays down minimum safety and health requirements for the organisation of working time, in respect of periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work. That Directive should be amended for the following reasons.

(3) Road, air, sea and rail transport, inland waterways, sea fishing, other work at sea and the activities of doctors in training are excluded from the scope of Council Directive 93/104/EC.

(4) The Commission, in its proposal of 20 September 1990, did not exclude any sectors and activities from Council Directive 93/104/EC, nor did the European Parliament in its Opinion of 20 February 1991 accept such exclusions.

(5) The health and safety of workers should be protected at the workplace not because they work in a particular sector or carry out a particular activity, but because they are workers.

(6) As regards sectoral legislation for mobile workers, a complementary and parallel approach is needed in the provisions on transport safety and the health and safety of the workers concerned.

(7) Account needs to be taken of the specific nature of activities at sea and of doctors in training.

(8) Protection of the health and safety of mobile workers in the excluded sectors and activities should also be guaranteed.

(9) The existing provisions concerning annual leave and health assessments for night work and shift work should be extended to include mobile workers in the excluded sectors and activities.

(10) The existing provisions on working time and rest need to be adapted for mobile workers in the excluded sectors and activities.

(11) All workers should have adequate rest periods. The concept of 'rest' must be expressed in units of time, i.e. in days, hours and/or fractions thereof.

(12) A European Agreement in respect of the working time of seafarers has been put into effect by means of a Council Directive [5], on a proposal from the Commission, in accordance with Article 139(2) of the Treaty. Accordingly, the provisions of this Directive should not apply to seafarers.

(13) In the case of those 'share-fishermen' who are employees, it is for Member States to determine, pursuant to Article 7 of Council Directive 93/104/EC, the conditions for entitlement to, and granting of, annual leave, including the arrangements for payments.

(14) Specific standards laid down in other Community instruments relating, for example, to rest periods, working time, annual leave and night work for certain categories of workers should take precedence over the provisions of Council Directive 93/104/EC as amended by this Directive.

[1] OJ C 43, 17.2.1999, p. 1.
[2] OJ C 138, 18.5.1999, p. 33.
[3] Opinion of the European Parliament of 14 April 1999 (OJ C 219, 30.7.1999, p. 231), Council Common Position of 12 July 1999 (OJ C 249, 1.9.1999, p. 17) and Decision of the European Parliament of 16 November 1999 (not yet published in the Official Journal). Decision of the European Parliament of 17 May 2000 and Council Decision of 18 May 2000.
[4] OJ L 307, 13.12.1993, p. 18.
[5] 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).

(15) In the light of the case law of the Court of Justice of the European Communities the provision relating to Sunday rest should be deleted.

(16) In its judgment in Case C-84/94 United Kingdom v. Council [1] the Court of Justice ruled that Council Directive 93/104/EC accords with the principles of subsidiarity and proportionality set out in Article 5 of the Treaty. There is no reason to assume that that judgment is not applicable to comparable rules concerning a number of aspects of the organisation of working time in excluded sectors and activities,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 93/104/EC is hereby amended as follows:

1. Article 1(3) shall be replaced by the following:

'3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Articles 14 and 17 of this Directive.

This Directive shall not apply to seafarers, as defined in 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) (*) without prejudice to Article 2(8) of this Directive.

(*) OJ L 167, 2.7.1999, p. 33.';

2. in Article 2, the following shall be added:

'7. "mobile worker" shall mean any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway.

8. "offshore work" shall mean work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel.

9. "adequate rest" shall mean that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.';

3. In Article 5, the following subparagraph shall be deleted:

'The minimum rest period referred to in the first subparagraph shall in principle include Sunday.'

4. Article 14 shall be replaced by the following:

'Article 14

More specific Community provisions

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.'

5. Article 17(2.1) shall be replaced by the following:

'2.1. from Articles 3, 4, 5, 8 and 16:

(a) in the case of activities where the worker's place of work and his place of residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another;

(b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;

(c) in the case of activities involving the need for continuity of service or production, particularly:

(i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, including the activities of doctors in training, residential institutions and prisons;

(ii) dock or airport workers;

(iii) press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services;

(iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants;

(v) industries in which work cannot be interrupted on technical grounds;

(vi) research and development activities;

(vii) agriculture;

(viii) workers concerned with the carriage of passengers on regular urban transport services;

(d) where there is a foreseeable surge of activity, particularly in:

(i) agriculture;

(ii) tourism;

(iii) postal services;

[1] ECR [1996] I — 5755.