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)

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

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

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;

(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.

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

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 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.

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

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.

[[F1]3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organisations concerned with this question. In this context due account shall be taken of the Resolution of the 94th (Maritime) Session of the General Conference of the International Labour Organisation concerning information on occupational groups.**]**

Textual Amendments

F1 Inserted by Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC.

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;

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

(c) **[**F2the term ‘seafarer’ means any person who is employed or engaged or works in any capacity on board a ship to which this Agreement applies;

(d) the term ‘shipowner’ means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.**]**

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.

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

(ii) **[**X1 77 hours in any seven-day period.**]**

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