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16031/14

**Interinstitutional File:
2014/0212 (NLE)**

**SOC 829
EMPL 180
SAN 451
TRANS 559**

REPORT

from: Permanent Representatives Committee (Part 1)
to: Council (EPSCO)

No prev.doc.: 15753/14 SOC 802 EMPL 169 SAN 440 TRANS 541
No. Cion prop.: 11688/14 SOC 558 EMPL 95 SAN 282 TRANS 355 - COM(2014) 452 final

Subject: Proposal for a COUNCIL DIRECTIVE implementing the European Agreement concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) concerning certain aspects of the organisation of working time in inland waterway transport
- *Political agreement*

I. INTRODUCTION

On 7 July 2014, the Commission, acting in accordance with Article 155(2) TFEU, submitted a proposal¹ to the Council with the aim of giving legal effect to the European Agreement concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) concerning certain aspects of the organisation of working time in inland waterway transport. The proposal is not subject to co-decision due to the legal base required in this case. The Commission provided its assessment of the agreement therefore in form of an analytical document². The European Parliament was informed according to this Treaty provision.

¹ 11688/14 + ADD 1 + ADD 2 + ADD 3.

² 11688/14 ADD 2.

II. EUROPEAN AGREEMENT CONCLUDED BY THE SOCIAL PARTNERS

This sectorial EU-level social partner agreement introduces specific minimum rules governing working time for mobile workers on passenger or cargo transport crafts in commercial inland waterway transport across the EU. It is a specific instrument in the sense of Article 14 of the general Working Time Directive 2003/88/EC. The agreement provides a tailor-made and flexible organisation of the working time in the commercial inland waterways transport sector while offering an adequate level of protection for the health and safety of workers.

The legal basis limits the Council's leeway, allowing the Council only to either adopt the draft Directive proposed by the Commission with a view to implementing the social partner agreement or to refuse its adoption, maintaining a status quo. The agreement as such cannot be amended by the Council, meaning that for instance no limitations to the scope can be introduced. Furthermore, as the EU-level social partners in the inland waterway transport sector decided to avail themselves of Article 155(2) TFEU, neither the Commission nor the Council are entitled to suggest to them to implement the agreement autonomously.

III. WORK IN THE COUNCIL PREPARATORY BODIES

On the suggestion of some delegations in the Working Party on Social Questions³, the Presidency reverted back to the signatories of the agreement to inquire about a number of issues. In their joint answer (doc. 16239/14), the EU-level social partners clarified that they had taken the different characteristics of the different river basins into account during their negotiations. They had tabled a fully encompassing agreement that takes into account all the various specificities of the European inland waterway sector, inter alia the different company structures, with the intention to cover all mobile workers in the sector (navigation/nautical crew and shipboard personnel) working on crafts in all EU Member States in commercial inland waterways transport, irrespective of the size of the craft, of the fact whether inland waterways are interconnected or not or the size of the inland waterways transport sector as a whole.

³ Outcomes of proceedings: 11866/14 and 13810/14.

In the meeting of the Permanent Representatives Committee on 26 November 2014, the Commission pointed out that this agreement should be seen in the context of the re-launch of the EU-level social dialogue. The proposal contains more flexibility than the general working time Directive 2003/88/EC, which all Member States should have transposed by now. It thus promotes better regulation. Member States are allowed to maintain more favourable provisions than the provisions in the agreement. The process was adequately transparent: all Member States and social partners were consulted in due time. In relation to the question of the legal scope, the ECJ has ruled that in respect of the principle of legal certainty, all Member States are under an obligation to transpose provisions of EU Directives. Furthermore, according to ECJ case-law, Member States for which the transposition is pointless for reasons of geography, can inform the Commission of the reasons that justify an exemption at the moment of the required transposition into national law. As guardian of the Treaties, the Commission will then review the reasons on a case-by-case basis.

IV. OPEN ISSUES

The following reservations remain after the meeting of the Permanent Representatives Committee:

- **General reservations:** CZ, EE, IE, EL, CY, HU, MT and UK.
- **Scrutiny reservations:** PL and FI.
- **Parliamentary reservations:** IE, MT and UK.
- **Linguistic reservation:** SK.

V. CONCLUSION

The Permanent Representatives' Committee recommends the Council (EPSCO) on 11 December to reach a political agreement on the text of the draft Directive as set out in document 16031/14 ADD 1.