



COMMISSION OF THE EUROPEAN COMMUNITIES

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**OPINION OF THE COMMISSION**

**pursuant to Article 251(2)(c) of the EC Treaty  
on the European Parliament's amendments  
to the Council's common position regarding the**

proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**AMENDING DIRECTIVE 93/104/EC OF 23 NOVEMBER 1993 CONCERNING  
CERTAIN ASPECTS OF THE ORGANIZATION OF WORKING TIME TO COVER  
SECTORS AND ACTIVITIES EXCLUDED FROM THAT DIRECTIVE**

**AMENDING THE PROPOSAL OF THE COMMISSION**  
pursuant to Article 250 (2) of the EC Treaty

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### **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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##### **1. BACKGROUND**

The Commission sent the above proposal for a Directive based on Article 118A of the Treaty (now Article 137) to the Parliament and the Council on 25 November 1998.

The Economic and Social Committee gave its Opinion on 25 March 1999.

The European Parliament adopted an Opinion on First Reading on 14 April 1999.

The Commission accepted 12 amendments proposed by the Parliament. It did not make an amended proposal, but reported its position on all the amendments to the Council.

The Council adopted its Common Position unanimously on 12.7.99. The Commission maintained its proposal in respect of the key points at issue.

On 16 November 1999, at its second reading, the European Parliament adopted 10 amendments to the Council Common Position.

This opinion sets out the Commission's position on the European Parliament's amendments in accordance with Article 251 (2)(c) of the EC Treaty.

##### **2. AIM OF COMMISSION PROPOSAL**

The Council of Ministers adopted Directive 93/104/EC on certain aspects of the organisation of working time on 23 November 1993. Certain sectors and activities are excluded from the scope of the Directive. These are air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training.

The current proposal was part of a package of measures seeking to protect workers not covered by Directive 93/104/EC against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working patterns. This particular proposal sought to amend that Directive to cover all non-mobile workers, as well as mobile workers in the rail sector, and to make certain provisions in respect of other mobile workers.

### **3. COMMISSION'S OPINION ON THE AMENDMENTS PROPOSED BY THE PARLIAMENT**

#### **3.1. Summary of the Commission's position**

The Commission can accept four of the amendments in full and a further three in principle.

The Commission cannot accept three of the amendments adopted by the Parliament.

#### **3.2. Parliament's amendments on second reading**

##### *3.2.1. Amendments accepted*

###### **3.2.1.1. Amendment 2 ("own account" drivers) (Article 1(2))**

The amendment would remove from the definition of "mobile workers" those workers who are employed as a member of the travelling personnel of an undertaking which on its own account operates transport services for passengers or goods by road, rail or inland waterway. The result of this amendment, which reinstates the Commission's original proposal, would be that such workers would receive the full protection of the Directive.

###### **3.2.1.2. Amendment 3 (derogation in respect of offshore workers) (Article 1(5))**

This amendment clarifies the text to ensure that the possibility for derogation is not restricted to offshore work.

###### **3.2.1.3. Amendment 4 (derogation in respect of urban transport workers) (Article 1(5))**

This amendment removes words which are considered to be superfluous from the Common Position.

###### **3.2.1.4. Amendment 8 (*implementation period*) (Article 2)**

This reinstates the two-year implementation period proposed by the Commission.

##### *3.2.2. Amendments accepted in principle*

###### **3.2.2.1. Amendment 6 (Limits on working time of mobile and offshore workers) (Article 1(7))**

The Commission proposed that Member States should be allowed to extend to one year the reference period for calculating the average for the limit of 48-hours a week in respect of mobile workers and offshore workers. This amendment would apply the same reference periods to mobile workers as to other workers already covered by the Directive. The amendment would, however, continue to allow the average to be

calculated over 1 year in respect of offshore workers, although this would now be subject to certain conditions regarding consultation and negotiation and a review clause after 5 years. The wording needs to be clarified to ensure that genuine efforts are made to enter into negotiations, while preventing either side from blocking the possibility for derogation by refusing to negotiate. In addition, the review clause should be aligned with Article 3 of the Common Position to provide for the Commission to propose suitable amendments, if necessary.

3.2.2.2. Amendment 7 (Limits on working time of workers on board sea-going fishing vessels) (Article 1(7))

This amendment seeks to impose a limit on the number of hours, which workers on board sea-going fishing vessels would be allowed to work over a 12-month period. This would be a maximum of 48 hours a week on average, calculated over a reference period of 12 months. No derogations would be allowed from these provisions. The wording of this provision needs to be aligned with the wording of Article 6 of Directive 93/104/EC.

3.2.2.3. Amendment 9 (*workers in urban passenger transport*) (Article 3a (new))

The purpose of this amendment is to provide for a review, within 5 years, of the operation of the provisions in relation to workers in urban passenger transport in order to ensure a coherent approach in respect of road and rail transport. The review clause should be aligned with Article 3 of the Common Position to provide for the Commission to propose suitable amendments, if necessary.

3.2.3. *Amendments not accepted*

3.2.3.1. Amendment 1 (*Sunday rest*) (Recital 15)

The Commission considers that the proposed amendment to the recital in respect of Sunday rest is not appropriate in the context of the current proposal.

3.2.3.2. Amendment 5 (*Doctors in training*) (Article 1(6))

The Commission maintains its original proposal with regard to doctors in training. Under the proposal, all provisions of the Working Time Directive would apply to doctors in training. However the Commission proposed to allow a transitional period of seven years from the date of adoption for implementation of the 48-hour maximum weekly working time on average, where there is an agreement between the employer and workers' representatives. This would be subject to a maximum of 54 hours a week on average over a reference period of 4 months for calculation of the average. The Commission considers that its proposal continues to be realistic, when compared with the Parliament's amendment in favour of a transitional period of 4 years and the Council's Common Position, which provides for a total transitional period of 13 years.

3.2.3.3. Amendment 10 (*Adequate rest*) (Recital 11)

The Commission considers that this amendment is not appropriate. The workers concerned would be non-mobile workers, railway workers, doctors in training and offshore workers. The provisions of Articles 3, 4 and 5 of Directive 93/104/EC (concerning daily rest, breaks and weekly rest respectively) will apply in full to all

these workers. Where derogations are allowed from these provisions, the workers concerned must be afforded "equivalent periods of compensatory rest" in accordance with Article 17.2 of that Directive. This will give greater protection to the workers concerned than would a more general provision concerning "adequate rest". With regard to other workers covered by the proposed recital, i.e. mobile workers and workers on board sea-going fishing vessels, the adequate rest provisions will already apply. There are no derogations from these provisions.

### **3.3. Amended proposal**

The Commission is not making an amended proposal, but invites the Council to take full account of this Opinion, when considering the amendments proposed by the Parliament.