

Proposal for a Council Directive concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)

(2000/C 337 E/22)

(Text with EEA relevance)

COM(2000) 382 final — 2000/0164(CNS)

(Submitted by the Commission on 23 June 2000)

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,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas:

- (1) 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.
- (2) The Council adopted Directive 93/104/EC on certain aspects of the organization of working time.
- (3) Civil Aviation was one of the sectors and activities excluded from the scope of that Directive.
- (4) The Commission, in accordance with Article 138(2) of the Treaty, 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.
- (5) The Commission, considering after such consultation that Community action was desirable, once again consulted management and labour at Community level on the substance of the envisaged proposal in accordance with Article 138(3) of the Treaty.
- (6) The Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) have informed the Commission of their desire to enter into negotiations in accordance with Article 138(4) of the Treaty.
- (7) The said organisations concluded, on 22 March 2000, a European Agreement on the Organisation of Working Time of Mobile Staff in Civil Aviation.

(8) 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 139(2) of the Treaty.

(9) The Council, in its Decision of 13 March 2000 on guidelines for Member States' employment policies for the year 2000 invited the social partners at all appropriate levels to negotiate agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security.

(10) This Directive and the annexed Agreement lay down more specific requirements within the meaning of Article 14 of Council Directive 93/104/EC as regards the organisation of working time of mobile staff in civil aviation.

(11) The proper instrument for implementing the Agreement is a Directive within the meaning of Article 249 of the Treaty which binds the Member States as to the result to be achieved, whilst leaving them the choice of form and methods.

(12) In view of the highly integrated nature of the aviation sector and the conditions of competition prevailing in it, the objectives of this Directive to protect workers' health and safety cannot be sufficiently achieved by the Member States and Community action is therefore required. 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 the said definitions are compatible with 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 has drafted its proposal for a Directive in compliance with Article 137(2) of the Treaty which provides that Directives in the social policy domain 'shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings'.
- (16) The Directive and the annexed Agreement establish minimum standards; Member States and/or the social partners may maintain or introduce more favourable provisions.
- (17) Implementation of this Directive may not serve to justify any regression in relation to the situation which already exists in each Member State.
- (18) 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 give legal effect to the annexed European Agreement on the organisation of working time of mobile staff in civil aviation concluded on 22 March 2000 between the organisations representing management and labour in the civil aviation sector, the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA).

Article 2

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

Member States shall determine the range of sanctions applicable for infringements of national provisions made in implementation of this Directive and shall take all necessary steps to ensure that they are enforced. The sanctions must be effective, commensurate with the infringement, and must constitute a sufficient deterrent. Member States shall notify these provisions to the Commission by the date mentioned in Article 4 at the latest, and any subsequent amendment thereto in good time.

Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years from its adoption], 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.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 5

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 6

This Directive is addressed to the Member States.

ANNEX

European Agreement on the Organisation of Working Time of Mobile Staff In Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)

Having regard to the Treaty establishing the European Community and in particular Articles 138 and 139(2) thereof;

Whereas Article 139(2) of the Treaty 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;

Whereas the signatory parties consider that the provisions of this Agreement are 'more specific requirements', within the meaning of Article 14 of Council Directive 93/104/EC, and that the provisions of that Directive should not apply;

The signatory parties have agreed the following:

Clause 1

1. The Agreement applies to the working time of mobile staff in civil aviation.
2. It lays down more specific requirements within the meaning of Article 14 of Council Directive 93/104/EC relating to the organisation of working time of mobile staff in civil aviation.

Clause 2

1. 'Working time' means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice.
2. 'Mobile staff in civil aviation' means crew members on board a civil aircraft, employed by an undertaking established in a Member State.
3. 'Block flying time' means the time between an aircraft first moving from its parking place for the purpose of taking off until it comes to rest on the designated parking position and until all engines are stopped.

Clause 3

1. Mobile staff in civil aviation are entitled to paid annual leave of at least four weeks, in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and or/practice.
2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

Clause 4

1. (a) Mobile staff in civil aviation are entitled to a free health assessment before their assignment and thereafter at regular intervals;
(b) Mobile staff in civil aviation suffering from health problems recognised as being connected with the fact that they also work at night will be transferred whenever possible to mobile or non-mobile day work to which they are suited.
2. The free health assessment referred to in paragraph 1(a) must comply with medical confidentiality.
3. The free health assessment referred to in paragraph 1(a) may be conducted within the national health system.

Clause 5

1. Mobile staff in civil aviation will have safety and health protection appropriate to the nature of their work.
2. Adequate protection and prevention services or facilities with regard to the safety and health of mobile staff in civil aviation will be available at all times.

Clause 6

Necessary measures will be taken to ensure that an employer, who intends to organise work according to a certain pattern, takes account of the general principle of adapting work to the worker.

Clause 7

Information concerning specific working patterns of mobile staff in civil aviation should be provided to the competent authorities, if they so request.

Clause 8

1. Working time should be looked at without prejudice to any future Community legislation on flight and duty time limitations and rest requirements and in conjunction with national legislation on this subject which should be taken into consideration in all related matters.

2. The maximum annual working time, including some elements of standby for duty assignment as determined by the applicable law, will be 2000 hours in which the block flying time will be limited to 900 hours.

3. The maximum annual working time should be spread as evenly as practicable throughout the year.

Clause 9

Without prejudice to Clause 3, mobile staff in civil aviation will be given days free of all duty and standby, which are notified in advance, as follows:

(a) at least 7 local days in each calendar month, which may include any rest periods required by law; and

(b) at least 96 local days in each calendar year, which may include any rest periods required by law.

Clause 10

The parties will review the above provisions two years after the end of the implementation period laid down in the Council decision putting this Agreement into effect.

Brussels, 22 March 2000.

Association of European Airlines (AEA)

Karl-Heinz Neumeister, Secretary General

Manfred Merz, Vice Chairman of AEA Social Affairs Committee, Chairman of the Negotiating Team

European Transport Workers' Federation (ETF)

Brenda O'Brien, Assistant General Secretary

Betty Lecouturier, President, Cabin Crew Committee

Bent Gehlsen, Negotiating Group Member, Cabin Crew Committee

European Cockpit Association (ECA)

Captain Francesco Gentile, Chairman

Captain Bill Archer, Vice Chairman

Giancarlo Crivellaro, General Secretary

European Regions Airline Association (ERA)

Mike Ambrose, Director General

The International Air Carrier Association (IACA)

Marc Frisque, Director General

Allan Brown, Director, Aeropolitical and Industry Affairs
