

COMMON POSITION (EC) No 20/2001**adopted by the Council on 23 March 2001**

with a view to adopting Directive 2001/.../EC of the European Parliament and of the Council of ... on the organisation of the working time of persons whose occupation is the performance of mobile road-transport activities

(2001/C 142/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 71 and 137(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport ⁽⁴⁾ laid down common rules on driving times and rest periods for drivers. That Regulation does not cover other aspects of working time for road transport.
- (2) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time ⁽⁵⁾ makes it possible to adopt more specific requirements for the organisation of working time. Bearing in mind the sectoral nature of this Directive, the provisions thereof take precedence over Directive 93/104/EC by virtue of Article 14 thereof.
- (3) Despite intensive negotiations between the social partners, it has not been possible to reach agreement on the subject of mobile workers in road transport.
- (4) It is therefore necessary to lay down a series of more specific provisions concerning the hours of work in road transport intended to ensure the safety of transport and the health and safety of the persons involved.

(5) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(6) The scope of this Directive covers only mobile workers employed by transport undertakings established in a Member State participating in mobile road-transport activities covered by Regulation (EEC) No 3820/85 or, failing that, by the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR).

(7) It should be made clear that mobile workers excluded from the scope of this Directive, other than self-employed drivers, benefit from the basic protection provided for in Directive 93/104/EC. That basic protection includes the existing rules on adequate rest, the maximum average working week, annual leave and certain basic provisions for night workers including health assessment.

(8) As self-employed drivers are included within the scope of Regulation (EEC) No 3820/85 but excluded from that of Directive 93/104/EC, they should be excluded temporarily from the scope of this Directive on the understanding that the Commission will assess the consequences of that temporary exclusion.

(9) The definitions used in this Directive are not to constitute a precedent for other Community regulations on working time.

(10) In order to improve road safety, prevent the distortion of competition and guarantee the safety and health of the mobile workers covered by this Directive, the latter should know exactly which periods devoted to road transport activities constitute working time and which do not and are thus deemed to be break times, rest times or periods of availability. These workers should be

⁽¹⁾ OJ C 43, 17.2.1999, p. 4.

⁽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. 235), as confirmed on 6 May 1999 (OJ C 279, 1.10.1999, p. 270), Council Common Position of 23 March 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 370, 31.12.1985, p. 1.

⁽⁵⁾ OJ L 307, 13.12.1993, p. 18. Directive as amended by Directive 2000/34/EC of the European Parliament and of the Council (OJ L 195, 1.8.2000, p. 41).

granted minimum daily and weekly periods of rest, and adequate breaks. It is also necessary to place a maximum limit on the number of weekly working hours.

- (11) Research has shown that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of organisation and that long periods of night work can be detrimental to the health of workers and can endanger their safety and also road safety in general.
- (12) As a consequence, there is a need to limit the duration of periods of night work and to provide that professional drivers who work at night should receive appropriate compensation for their activity and should not be disadvantaged as regards training opportunities.
- (13) Employers should keep records of instances when the maximum average working week applicable to mobile workers is exceeded.
- (14) The provisions of Regulation (EEC) No 3820/85 on driving time in international and national passenger transport, other than regular services, should continue to apply. The working time of drivers carrying out such transport may therefore, subject to certain conditions, exceed the maximum weekly average laid down in this Directive for goods transport and for regular passenger transport services.
- (15) The Commission should monitor the implementation of this Directive and developments in this field in the Member States and submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a report on the application of the rules and the consequences of the provisions on night work.
- (16) It is necessary to provide that certain provisions may be subject to derogations adopted, according to the circumstances, by the Member States or the two sides of industry. As a general rule, in the event of a derogation, the workers concerned must be given compensatory rest periods,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive shall be to establish minimum requirements in relation to the organisation of working time in

order to improve the health-and-safety protection of persons whose occupation is the performance of mobile road-transport activities and to improve road safety and align conditions of competition.

Article 2

Scope

1. This Directive shall apply to mobile workers employed by undertakings established in a Member State, participating in road-transport activities covered by Regulation (EEC) No 3820/85 or, failing that, by the AETR Agreement.

By ... (*), the Commission shall submit an assessment of the consequences of the temporary exclusion of self-employed drivers to the European Parliament and to the Council. The assessment shall analyse in particular the effects of the exclusion of self-employed drivers on road safety, on conditions of competition, on the structure of the profession and on social aspects. Depending on the outcome of that analysis, the Commission will propose, if appropriate, conditions under which this Directive will apply to self-employed drivers, the definition of which will have to be made clear, at the latest on ... (**).

2. The provisions of Directive 93/104/EC shall apply to mobile workers excluded from the scope of this Directive.

3. In so far as this Directive contains more specific provisions as regards mobile workers performing road transport activities it shall, pursuant to Article 14 of Directive 93/104/EC, take precedence over the relevant provisions of that Directive.

4. This Directive shall supplement the provisions of Regulation (EEC) No 3820/85 and, where necessary, of the AETR Agreement, which take precedence over the provisions of this Directive.

Article 3

Definitions

For the purposes of this Directive:

(a) 'working time' shall mean the time from the beginning to the end of work, during which the mobile worker is at his workstation, at the disposal of the employer and exercising his functions or activities, that is to say:

- the time devoted to all road transport activities. These activities are in particular, the following: driving, loading and unloading, assisting passengers boarding and disembarking from the vehicle, cleaning and technical maintenance as well as all other work intended to ensure the safety of the vehicle, its cargo and passengers,

(*) Five years after the entry into force of this Directive.

(**) Six years after the entry into force of this Directive.

- the times during which the mobile worker is required to remain at his workstation, ready to take up work, and cannot, on the instructions of his employer, dispose freely of his time, in particular during periods awaiting loading or unloading, where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States.

The break times referred to in Article 5, the rest times referred to in Article 6 and, without prejudice to the legislation of Member States or agreements between the social partners providing that such periods should be compensated or limited, the periods of availability referred to in (b) of this Article, shall be excluded from working time;

(b) 'periods of availability' shall mean:

- periods other than those relating to break times and rest times during which the mobile worker is not required to remain at his workstation, but must be available to answer any calls to start or resume driving or to carry out other work. In particular such periods of availability shall include periods during which the mobile worker is accompanying a vehicle being transported by ferryboat or by train as well as periods of waiting at frontiers and those due to traffic prohibitions.

These periods and their foreseeable duration shall be known in advance by the mobile worker, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States,

- for mobile workers driving in a team, the time spent sitting next to the driver or on the couchette while the vehicle is in motion;

(c) 'workstation' shall mean:

- the location of the undertaking for which the mobile worker carries out duties,
- the vehicle which the mobile worker uses when he carries out duties and
- any other place in which activities connected with transportation are carried out;

(d) 'mobile worker' shall mean any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;

- (e) 'self-employed driver' shall mean anyone whose main occupation is to carry passengers or goods by road at a customer's request;
- (f) 'week' shall mean the period between 00.00 on Monday and 24.00 on Sunday;
- (g) 'night time' shall mean a period of at least four hours, as defined by national law, between 00.00 and 07.00;
- (h) 'night work' shall mean any work performed during night time.

Article 4

Maximum weekly working time

Member States shall take the measures necessary to ensure that:

- (a) the average weekly working time may not exceed 48 hours. The maximum weekly working time may be extended to 60 hours only if, over four months, an average of 48 hours a week is not exceeded. The fourth and fifth subparagraphs of Article 6(1) of Regulation (EEC) No 3820/85 or, where necessary, the fourth subparagraph of Article 6(1) of the AETR Agreement shall take precedence over this Directive, in so far as the drivers concerned do not exceed an average working time of 48 hours a week over four months;
- (b) working time for different employers is the sum of the working hours. The employer shall ask the mobile worker concerned in writing for an account of time worked for another employer. The mobile worker shall provide such information in writing.

Article 5

Breaks

1. Member States shall take the measures necessary to ensure that, without prejudice to the level of protection provided by Regulation (EEC) No 3820/85 or, failing that, by the AETR Agreement, mobile workers in no circumstances work for more than six consecutive hours without a break. Working time shall be interrupted by a break of at least 30 minutes, if working hours total between six and nine hours, and of at least 45 minutes, if working hours total more than nine hours.

2. Breaks may be subdivided into periods of at least 15 minutes each.

*Article 6***Rest periods**

For the purposes of this Directive, apprentices and trainees shall be covered by the same provisions on rest time as other mobile workers in pursuance of Regulation (EEC) No 3820/85 or, failing that, of the AETR Agreement.

*Article 7***Night work**

1. Member States shall take the measures necessary to ensure that:

— if night work is performed, the daily working time does not exceed 10 hours in each 24-hour period,

— compensation for night work is given in accordance with national legislative measures, collective agreements, agreements between the two sides of industry and/or national practice, on condition that such compensation is not liable to endanger road safety.

2. By ... (*), the Commission shall, within the framework of the report which it draws up in accordance with Article 13(2), assess the consequences of the provisions laid down in paragraph 1 above. The Commission shall, if necessary, submit appropriate proposals along with that report.

3. The Commission shall present a proposal for a Directive containing provisions relating to the training of professional drivers, including those who perform night work, and laying down the general principles of such training.

*Article 8***Derogations**

1. Derogations from Articles 4 and 7 may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry, provided that the persons concerned are afforded equivalent periods of compensatory rest.

2. The option to derogate from Article 4 may not result in the establishment of a reference period exceeding six months, for calculation of the average maximum weekly working time of 48 hours.

(*) Five years after the entry into force of this Directive.

*Article 9***Information and records**

Member States shall ensure that:

(a) mobile workers are informed of the relevant national requirements, the internal rules of the undertaking and agreements between the two sides of industry, in particular collective agreements and any company agreements, reached on the basis of this Directive, without prejudice to Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship ⁽¹⁾;

(b) the working time of mobile workers is recorded. Records shall be preserved for at least one year after the end of the period covered. Employers shall be responsible for recording the working time of mobile workers. Employers shall upon request provide mobile workers with copies of the records of hours worked.

*Article 10***More favourable provisions**

This Directive shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the health and safety of mobile workers or their right to facilitate or permit the application of collective agreements or other agreements concluded between the two sides of industry which are more favourable to the protection of the health and safety of mobile workers.

*Article 11***Penalties**

Member States shall lay down a system of penalties for breaches of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that these penalties are applied. The penalties thus provided for shall be effective, proportional and dissuasive.

*Article 12***Negotiations with third countries**

Once this Directive has entered into force, the Community shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive to mobile workers employed by undertakings established in a third country.

⁽¹⁾ OJ L 288, 18.10.1991, p. 32.

*Article 13***Reports**

1. Member States shall report to the Commission every two years on the implementation of this Directive, indicating the views of the two sides of industry. The report must reach the Commission no later than 30 September following the date on which the two-year period covered by the report expires. The two-year period shall be the same as that referred to in Article 16(2) of Regulation (EEC) No 3820/85.

2. The Commission shall produce a report every two years on the implementation of this Directive by Member States and developments in the field in question. The Commission shall forward this report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

*Article 14***Final provisions**

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by ... (*) or shall ensure by that date that the two sides of industry have established the necessary measures by agreement, the Member States being obliged to take any steps to allow them to be able at any time to guarantee the results required by this Directive.

When Member States adopt the measures referred to in the first subparagraph, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to the persons referred to in Article 2(1).

3. Member States shall communicate to the Commission the provisions of national law which they have already adopted or which they adopt in the field covered by this Directive.

*Article 15***Entry into force**

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

*Article 16***Addressees**

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

(*) Three years after the entry into force of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 25 November 1998, the Commission submitted in the context of its communication ⁽¹⁾ on the organisation of working time in the sectors and activities excluded from Directive 93/104/EC ⁽²⁾, a proposal for a specific directive for the road transport sector, namely a proposal for a Council directive concerning the organisation of working time for mobile workers performing road transport activities and for self-employed drivers ⁽³⁾. The proposal was based on Articles 71 and 137(2) of the EC Treaty.

The European Parliament delivered its opinion on the Commission proposal on 14 April 1999 ⁽⁴⁾ and, in its resolution of 6 May 1999 ⁽⁵⁾, confirmed its vote on the proposal for which the procedure had been changed (from cooperation to codecision) following the entry into force of the Treaty of Amsterdam.

The Economic and Social Committee delivered its opinion on 25 March 1999 ⁽⁶⁾.

The Committee of the Regions decided not to deliver an opinion ⁽⁷⁾.

On 27 November 2000, the Commission submitted an amended proposal and, at the Council meeting on 20 and 21 December 2000, further amended its proposal in accordance with the draft Common Position of the Council.

The Council adopted its Common Position in accordance with Article 251 of the EC Treaty on 23 March 2001.

II. PURPOSE

Within the framework of the general Directive 93/104/EC, the Commission has proposed a specific Directive on working time for the road transport sector to take account of the particular characteristics of activities in this sector.

Community social legislation applicable to the road transport sector currently consists of two regulations and one directive, namely Regulation (EEC) No 3820/85 ⁽⁸⁾, Regulation (EEC) No 3821/85 ⁽⁹⁾ and Directive 88/599/EEC ⁽¹⁰⁾.

1. Regulation (EEC) No 3820/85 includes, *inter alia* provisions applicable to employed drivers and self-employed workers engaged in passenger road transport or road haulage within the Community. The provisions of the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) ⁽¹¹⁾ apply to certain international transport operations covered by the Regulation.

⁽¹⁾ OJ C 43, 17.2.1999, p. 1.

⁽²⁾ Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (ABL OJ L 307, 13.12.1993, p. 18). Directive last amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Directive 93/104/EC to cover sectors and activities excluded from that Directive (OJ L 195, 1.8.2000, p. 41).

⁽³⁾ OJ C 43, 17.2.1999, p. 4.

⁽⁴⁾ OJ C 219, 30.7.1999, p. 231.

⁽⁵⁾ OJ C 279, 1.10.1999, p. 270.

⁽⁶⁾ OJ C 138, 18.5.1999, p. 33.

⁽⁷⁾ Letter of 25 June 1999.

⁽⁸⁾ Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ L 370, 31.12.1985, p. 1).

⁽⁹⁾ Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8). Regulation last amended by Regulation (EC) No 2135/98 also amending Directive 88/599/EEC (OJ L 274, 9.10.1998, p. 1).

⁽¹⁰⁾ Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 (OJ L 325, 29.11.1988, p. 55). Directive last amended by Regulation (EC) No 2135/98.

⁽¹¹⁾ Agreement of 1 July 1970, opened for signing in Geneva until 31 March 1971.

The Regulation includes provisions on the requirements to be met by crews (e.g. age, vocational training), driving periods, breaks and rest periods for drivers, prohibition of certain types of payment, possibility of exceptions, control procedures and penalties.

The Regulation provides solely for driving periods and includes no rules to cover the other periods which mobile workers and self-employed drivers spend working. The provisions on working time vary from one Member State to another both in form and in detail.

2. The Commission sees no justification in the context of the internal market for maintaining differences in working time as this places the undertakings concerned in a situation of unfair competition. The Commission contends therefore that common rules on working hours are essential. From the point of view of the liberalisation and development of road transport and increased trade with third countries, in its view these rules are also needed to prevent deteriorating working conditions for drivers and to avoid jeopardising safety.

The Commission also emphasises that all drivers, both employed and self-employed, should be placed on an equal footing, which entails bringing within the scope of the regulations on working hours those forms of subcontracting currently not covered by it.

3. It is for these reasons that the proposal for a sectoral directive provides for the fixing of common rules for the working hours of mobile workers and self-employed drivers. The Commission's initial 1998 proposal did not provide for the temporary exclusion of self-employed drivers from the scope of the Directive. According to the amended proposal of November 2000, however, the Directive will be applicable to self-employed drivers three years after the deadline for transposition. The Commission amended its proposal on this point, not at the European Parliament's request, but to take account of the deadlock within the Council due to the differences between delegations on whether or not the Directive should cover self-employed drivers. As indicated in part I above, the Commission once again amended its proposal in December 2000, in accordance with the Council's Common Position.

III. ANALYSIS OF THE COMMON POSITION

1. **Scope of the Directive** (Article 2 in particular)

According to the Common Position, the Directive is applicable solely to mobile workers employed by transport undertakings established in a Member State participating in mobile road-transport activities covered by Regulation (EEC) No 3820/85 or, failing that, by the AETR Agreement. It also stipulates that the basic protection provided for by general Directive 93/104/EEC extends to the other mobile workers excluded from its scope.

Depending on the outcome of the results of an assessment it should submit no later than five years after the Directive's entry into force, the Commission will propose, if appropriate, conditions under which self-employed drivers will be subject to the provisions of the Directive no later than six years after the date of its entry into force.

2. **Definitions of 'working time' and 'periods of availability'** (Article 3(a) and (b))

The Common Position includes in the definition of 'working time', the times during which the mobile worker is required to remain at his place of work, and cannot, on the instructions of his employer, dispose freely of his time. It adds by way of example, that periods spent awaiting loading or unloading are to be regarded as working time where their duration is not known in advance, and clarifies this criterion.

The Common Position defines as 'periods of availability', in accordance with Regulation (EEC) No 3821/85, the periods other than those relating to break times and rest times during which the mobile worker is not required to remain at his place of work, but must be available to answer any calls to start or resume driving or to carry out other work. These periods and their foreseeable duration shall be known in advance by the mobile worker, that is to say either before departure or just before the effective start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States.

These periods are not regarded as working time.

3. **Night work** (Article 3(g) and (h) — definitions — and Article 7 — rules)

The Common Position considers 'night work' to be any work performed during the night time, namely between 00.00 and 07.00 and stipulates that the daily working time of night workers in each 24-hour period must not exceed 10 hours. It also provides for the possibility of derogations.

IV. EUROPEAN PARLIAMENT AMENDMENTS

1. **European Parliament amendments adopted by the Council and by the Commission**

The Council accepted as they stood, in part or in spirit, 8 of the 16 amendments submitted by the European Parliament:

- in recital 14 of the Common Position relating to Article 4(a), amendment 1,
- in Article 2(1), amendments 2 and 25. Exclusion from the scope of the Directive of mobile workers participating in road-transport activities not covered by Regulation (EEC) No 3820/85 entails the exclusion from the Directive's application of the cases covered by these two amendments,
- in Article 3(a), first indent ('time spent on all other work intended to ensure the safety of the vehicle, its cargo and passengers shall be regarded as working time'), amendment 7,
- in Article 8, amendment 12, parts 2 and 3, and amendment 13,
- in Article 9(b), amendment 14, (records, however, being kept for one year as opposed to the two years provided for in the amendment) and amendment 15,
- in Article 14(2), amendment 17 concerning the addition of the non-regression clause. The Council considered it preferable to include this clause in the Article on final provisions rather than in Article 10 (Article 9 of the amended proposal), on more favourable provisions.

The Commission amended its proposal in accordance with the Council Common Position.

2. **European Parliament amendments not adopted by the Council and the Commission**

The Council did not adopt the following amendments.

The Commission amended its proposal in accordance with the Council Common Position.

2.1. *Self-employed drivers*

In view of the temporary exclusion of self-employed drivers from the scope of the Directive, the Council rejected the amendments that specifically concerned these drivers, namely

amendments 3, 4, 5, 6, 8, first part, and 16. In accordance with the European Parliament's request, reflected in amendment 10, the Common Position (Article 3(e)) has incorporated in the Directive a definition of 'self-employed drivers'. This definition differs from that proposed by the European Parliament, but it is not definitive, in the light of the second subparagraph of Article 2(1) of the Common Position.

2.2. *Night work (Article 3(g) and (h) and Article 7)*

The Council rejected amendments 9, 30 and 12, first part (removal of the possibility of derogating from Article 7) aimed at offering the persons concerned the necessary protection as regards health and safety. The Council felt that there should be some flexibility in the regulation of the night work of mobile workers engaged in road transport activities given the nature of the activity involved. Moreover, Article 17a of Directive 93/104/EC stipulates that Article 8 on the duration of periods of night work is not applicable to mobile workers: common rules on the subject are therefore covered by sectoral directives which adapt them on the basis of specific requirements.

2.3. *Knowing in advance when 'periods of availability' start (Article 3(b))*

The Council rejected amendment 8, second part, to the effect that 'standby periods' corresponding to 'periods of availability' provided for in Article 3(b) of the Common Position must be known 'at least one day in advance and prior to the completion of the previous shift in accordance with the conditions negotiated between the social partners and under the terms provided for in the legislation of the Member States'. In order to guarantee the flexibility necessary for the performance of road transport activities, the Common Position stipulates that mobile workers must be told to remain available 'either before departure or just before the effective start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States'.

2.4. *Derogations in respect of rest periods (Article 8)*

The European Parliament proposes in the first part of amendment 12 to provide for derogations from the provision on rest periods (Article 6 of the Common Position). Article 8 of the Common Position does not, however, grant this option as Article 6 on rest periods differs from the initial Commission proposal and no longer provides for additional clauses concerning rest periods for mobile workers not subject to Regulation (EEC) No 3820/85 or, alternatively, to the AETR Agreement. Article 2(2) of the common position stipulates that the provisions of general Directive 93/104/EC are applicable to these mobile workers.

2.5. *Penalties (Article 11)*

The Council rejected amendment 18 to the effect that Member States shall determine a common range of penalties. The Council found it unacceptable that Member States should be obliged to harmonise their penalty arrangements. In accordance with the subsidiarity principle, Member States are free to make their own arrangements in this area.

2.6. *Regulation of subcontracting*

The Council rejected amendment 19 inserting in the Article on the final provisions (Article 14 of the Common Position) a new paragraph concerning, *inter alia*, the regulation of subcontracting. The Council felt that this was a matter for the Member States.
