



# EU Labour Law

## *Working Conditions Acquis* **3 April 2019**

DG EMPL.B2 (Unit 'Working Conditions')

*These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union*

- **Article 153 TFEU:** the Union can act in several fields such as the protection of workers' health and safety, working conditions...
- In these fields the EU may adopt, by means of Directives, **minimum requirements** for gradual implementation (Qualified majority / Unanimity at the Council)
  - Of which some are based on social partners agreements (Article 155 TFEU)
- **Member States can be more protective**

## Four principal blocks of acquis:

- Collective rights
- Working time
- Transport
- Other working conditions
  - Standard and non standard forms of work

## *Collective rights Directives*

- Collective redundancies (98/59/EC)
- Transfer of undertakings (2001/23/EC)
- General Framework for Information & Consultation (Directive 2002/14/EC)
- Employer Insolvency Directive (2008/94/EC)
- European Works Councils (Directive 2009/38/EC)
- European Company – SE (Directive 2001/86/EC)
- European Cooperatives – SCE (Dir. 2003/72/EC)

# Information and consultation of employees



# 1. The General Framework for Information & Consultation (Directive 2002/14/EC)

- Objective: to establish a general framework of **minimum I&C requirements in MS**
- Applies to all establishments or undertakings a Member State that reach the following **thresholds**: either establishments with at least 20 employees in the MS, or undertakings with at least 50 employees in the MS
- **Sets out general principles**; practical arrangements are to be defined by MS, in such a way as to ensure their effectiveness

- *Management must provide employee representatives with information and consultation on:*
  - recent and probable **development of business** and of its economic situation,
  - state and probable **development of employment** within the business, and any threat to employment, or anticipatory measures against such threat,
  - any decisions likely to lead to **substantial changes** in work organisation or contractual relations....

- **Information** must be given with appropriate timing, manner and content to enable employee representatives to adequately prepare for consultation
- **Consultation:**
  - must be **appropriate** as to timing, method & content
  - includes **dialogue**: meetings with relevant level of management, formulating an **opinion**, and **reasoned reply** from management
  - must be 'with a view to **reaching agreement**', on certain decisions



## 2. Collective redundancies (98/59/EC)

- Objective: Approximation of the different laws of the Member States in order to afford greater protection to workers in the event of collective redundancies.
- Key message: Inform and consult workers before a decision leading to a collective redundancy is made (“employer contemplates”)

- **EU notion of "collective redundancies":**
  - **dismissals for reason(s) not related to individual workers are taken into account** → broad definition
  - then, one should look to **the number of redundancies within a certain period of time**
- MS can chose that their legislation will apply in case of:
  - (i) either, number of redundancies over a period of 30 days:**
    - at least 10 in establishments normally employing more than 20 and less than 100 workers,
    - at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers,
    - at least 30 in establishments normally employing 300 workers or more,
  - (ii) or, number of redundancies over a period of 90 days,** at least 20, whatever the number of workers normally employed in the establishments in question;

## Two obligations of employer:

### *1) Consultation of workers' representatives*

- **In writing & « in good time »**
- **Minimum requirements on the content**
- **Purpose:** to cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed (ie. aid for redeploying or retraining workers)

### *2) Written notification to the competent authority*

- **Copy must go to workers' representatives**
- **Period of 30 days for seeking solutions** (no dismissals to take place before the period ends)
- **Minimum requirements on the content**

### 3. European works councils (EWCs)

*Bodies representing the European employees of a transnational company:*

- Through them, workers are **informed** and **consulted** at transnational level by management on the progress of the business and any **significant decision** that could affect them
- First established through Directive 94/45/EC then revised by **Recast Directive 2009/38/EC**

- EWCs are established on the initiative of a **transnational large-scale employer** (+ 1000 workers in at least 2 EU countries) or upon the **request of 100 employees** from 2 countries
- The composition, competences and functioning of EWCs are to be defined by **agreement** between the central management and the "special negotiating body" representing the employees
- **Subsidiary requirements (see Annex to Directive)** apply automatically in the absence of agreement

- ***Information and consultation of employees***

- **Information:** at such time, in such fashion and with such content as to enable employees' representatives to undertake an in-depth assessment of the possible impact and prepare for consultation with the competent organ
- **Consultation:** at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided
- **Transnationality:** on matters that can **potentially** have effect in establishments in at least 2 MS – e.g. including transfers of activities or restructuring

- ***Central management & legislation applicable***
  - **If central management is not located in the EU, two options are provided:**
    - Central management's **representative agent** can be designated in a Member State;
    - Management of the establishment employing the most employees in a Member State ('deemed' central management) has to take on the central management's responsibilities under the Directive (automatically)

EWCs have to be **subject to law of the Member State** where either central management is located (if in the EU), or where the EWC 'deemed' central management or representative agent is located

## 4. European Company – SE (Directive 2001/86/EC)

- Only applies to businesses established as a 'European Company' (SE/Societas Europaeae) under Council Regulation EC 2157/2001
- A representative body of employees (**SE works councils**) will be set up
- No thresholds and no employee request is needed: management must establish arrangements for informing and consulting employees;

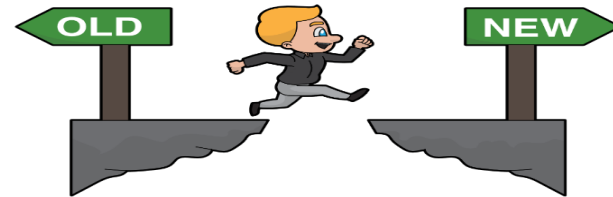


- Principle: agreement between companies and workers' representatives on employees' involvement (information, consultation and, sometimes, participation)
- Where no agreement can be reached, automatic provisions apply. These are provided by MS legislations, but must satisfy (at minimum) the provisions set out in Annex to the Directive.
- A similar **Directive (2003/72/EC)** exists for European Cooperatives - SCE

# Transfer of undertakings Directive 2001/23/EC

# Purpose of the ToU Directive

- **Objective: Protection of employees in the event of a change of employer**



*« the scheme and purpose of the Directive ... is intended to ensure, as far as possible, that the employment relationship continues unchanged with the transferee and by protecting workers against dismissals motivated solely by the fact of the transfer » (CJEU in C-19/83, Wendelboe)*

Two pillars of protection:

- transfer of rights and obligations arising from an employment relationship/collective agreements (Article 3)
- Protection against dismissals (Article 4)

# Scope of the ToU Directive

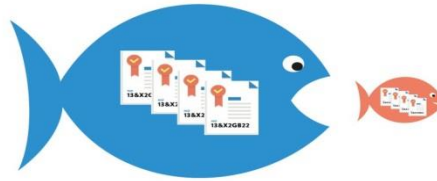
- **Personal scope: who is protected?**



Article 2(1)(d): any person protected as an “**employee**” under NL. However, there are limits to MS discretion:

- Article 2(2): no exclusion of employment contracts / relationships solely because of the number of working hours, their fixed-duration or temporary nature
- C-216/14 *Ruhrlandklinik*: CJEU does not consider itself bound by the legal characterisation of the employment relationship under NL

# Scope of the ToU Directive



- **Material scope: which situations are covered?**

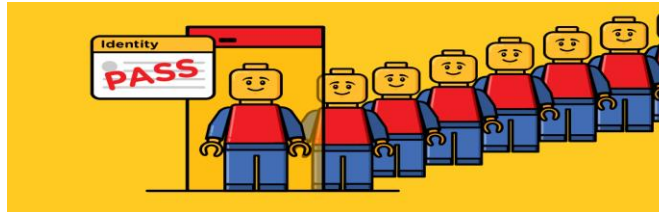
Article 1(1)(a): any transfer of undertaking/business (or part thereof) to another employer as a result of a legal transfer or merger

Article 1(1)(b): a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary

Article 1(1)(c): both public and private undertakings engaged in economic activity, whether or not they are operating for a gain

# Scope of the ToU Directive

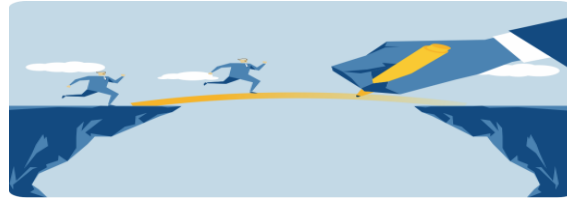
- How do we judge if the economic entity has retained its identity after transfer?



An overall assessment has to be made. In particular:

- does the economic activity remain the same?
- does the economic activity rely on significant assets and, if so, are these assets transferred?
- is a significant part of the workforce (staff) transferred?

# Content of protection



## Article 3:

- Automatic transfer of rights and obligations arising from an employment contract or employment relationship existing on the date of transfer
- Transferee to continue to observe the terms and conditions agreed in any collective agreement (at least during one year)

## Article 4:

- The transfer does not in itself constitute grounds for dismissal

## Article 7:

- Information and consultation of workers in good time before the transfer

# Working Time Directive 2003/88



# 1. Purpose of the WTD

- Sets out **minimum health and safety requirements** for the organisation of working time
- MAIN OBJECTIVE:  
Improving the working environment to protect workers' health and safety
- A FUNDAMENTAL RIGHT!
  - **Article 31(2) of the EU Charter of Fundamental Rights** (same value as Treaties)
  - Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

## 2.1. Scope of the WTD

- **Personal scope – who is covered?:**
  - Applying to '**workers**'
  - A worker is a person who performs services for and under the direction of another person for a certain period of time in return for which he receives remuneration
- This notion has an **autonomous EU law meaning**

## 2.2. Scope of the WTD

- **Material scope:**

- Lex specialis to OSH Framework Directive (89/391/EEC)
- Applying to all sectors: All sectors of activity, both public and private, within the meaning of Art. 2 of the OSH Framework Directive (89/391/EEC)
- A very limited exception in the case of exceptional events

- **Provisions:** No provisions about statutory working time, pay...

## 2.3. Scope of the WTD

### Sectoral Directives

*Working time for  
- mobile road transport  
activities  
(Regulation 561/2006/EC  
Directive 2002/15/EC)*

*Working time in civil  
aviation  
(Directive 2000/79/EC)*

*Working time in the  
railways sector  
(Directive 2005/47/EC)*

*Working time for  
seafarers  
(Directive 1999/63/EC)*

*Working time in inland  
waterway transport  
(Directive 2014/112/EU)*

## 3.1. Main provisions of the WTD

### Definition of working time – Article 2

- **Working time:** *“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”*
  - **Rest period:** *“any period which is not working time”*
- ➔ *No derogations are possible from this article*

## 3.2. Main provisions of the WTD

### Definition of working time – Article 2

- *A definition based on three cumulative criteria:*
  - **The worker is 'at work',**
  - **at the employer's disposal and**
  - **carrying out his activity**
- *Applied to specific periods of time:*
  - **On-call and stand-by time**
  - **Time spent travelling**

## 3.3. Main provisions of the WTD

<b>Daily rest</b> (Art. 3)	11 consecutive hours per 24-hour period
<b>Breaks</b> (Art. 4)	1 break when working > 6 hrs
<b>Weekly rest</b> (Art. 5)	24 hours (+ 11 hrs daily rest) per 7-day period
<b>Max. weekly working time</b> (Art. 6)	48 hours on average
<b>Maximum daily working time for night workers</b> (Art. 8)	8 hours per 24 hours
<b>Minimum paid annual leave</b> (Art. 7)	4 weeks

## 3.4. Main provisions of the WTD

### Maximum weekly working time of 48h

- **Encompassing all 'working time'**
- **Calculated over a reference period:**
  - up to 4 months, 6 or 12 months depending on the situation
  - of which the minimum paid annual leave and periods of sick leave must be excluded
- **Direct effect**
- **Derogation possible *via* individual opt-out**



## 3.5. Main provisions of the WTD

### Paid annual leave

*"A particularly important principle of Community and European Union social law"*

This right has a **dual purpose**, namely to allow the workers to:

- **Rest from work**
  - **Enjoy a period of relaxation and leisure**
- There can be **no derogations from this right.**

## 3.6. Main provisions of the WTD

### Paid annual leave

- **A minimum of 4 weeks subject to no conditions:**
  - Member States may regulate the exercise of this right but not condition its existence
- **A right to payment during leave**
- **Interaction with other types of leave**
- **Allowance in lieu**
- **Direct effect**

## 4. Derogations

<b>'Autonomous workers'</b> (Art. 17 (1))	Where "duration of working time is not measured and/or predetermined"; i.e. worker has full control over both volume & organisation of working hours
<b>Specific situations</b> (Art. 17 (2) & (3))	Derogating from all except Art. 6 Where continuity of service required and in case of accident or imminent risk of accident Implies 'compensatory rest' or, in exceptional cases, an 'appropriate protection'
<b>Individual opt-out from Art. 6</b> (Art. 22)	Where the 48 hours weekly limit may be exceeded subject to individual worker's consent.
<b>Limits to the derogations from the reference period for Art. 6</b> (Art. 19)	Standard: 4 months; extension possible: <ul style="list-style-type: none"><li>- by law to 6 months</li><li>- by collective agreements to 12 months</li></ul>

## 5. WTD on the ground - CJEU

- *The WTD has been **often challenged** before the CJEU via an action for failure to fulfil obligations, an action for annulment and many preliminary references*
  - **More than 70 cases!!**
- *The rulings had **major impact on the transposition and implementation**: scope of the directive, notion of 'worker', notion of 'working time', paid annual leave*
- *The **Court interprets the Directive in light of its purpose and legal basis**: the protection of the health and safety of workers*



## 6. Useful Links

***The Interpretative Communication:*** [https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.C\\_.2017.165.01.0001.01.FRA&toc=OJ:C:2017:165:TOC](https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.C_.2017.165.01.0001.01.FRA&toc=OJ:C:2017:165:TOC)

***The Implementation report:*** <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1494937215562&uri=CELEX:52017SC0204>

***Eurostat and Eurofound research:***

<http://ec.europa.eu/eurostat/data/database>

<https://www.eurofound.europa.eu/topic/working-time>

# Sectoral Transport Directives

# Working conditions in transport sector

- Directives mainly based on **social partner agreements**
  - Some of which implement ILO conventions
- **Personal scope:** mobile workers
- **Sectors:** Inland Waterways, Rail, Fishing, Maritime (seafarers), Civil Aviation and Road

# Inland waterway directive 2014/112

- Regulates working time only
  - **Sectoral directive in the sense of the Working Time Directive 2003/88**
  - Provisions on weekly and daily working time, rest time, breaks, night work, annual leave, protection of minors, emergency situations, health assessment and protection, etc..
- Geographical exemption (recital 17) – very, very strict interpretation
- **Applies per worker, not per vessel**
- **No cross border inland waterways needed**



# Railway sector directive 2005/47

- Regulates working time only
  - Sectoral directive in the sense of the Working Time Directive 2003/88
  - Provisions on daily rest time, breaks, weekly rest annual leave, driving time, etc..
- Applies to mobile workers in interoperable cross-border services
- Applies per worker, not per train

# Directive 2017/159 - Work in Fishing

- The Directive implements the Agreement concerning the implementation of the Work in Fishing Convention 2007 of the International Labour Organization (ILO) between Gogeca, EFT, and Europêche

**Risks** and **seriousness** of *accidents, injuries, and occupational diseases* are **high** in this sector.

# Directive 2017/159 - Work in Fishing

- **Main reasons** for codifying the area:
  - Accidents are often caused by *inadequate health and safety and working conditions*
  - *Slow ratification* of existing international treaties on safety on board vessels
  - *Fragmentation* of the legal framework

# Objectives of Directive 2017/159

- To **improve** the *working* and *living conditions* for fishermen working on vessels flying the flag of an EU Member State.
- To **protect** the *health* and *safety* of workers in the sea fishing sector.
- To **establish** a *consolidated legal framework* suited to working conditions in the sea fishing sector.

# Scope of Directive 2017/159

- Applies to:
  - All fishermen working in any capacity under a contract of employment or in an employment relationship on all fishing vessels engaged in commercial fishing;
  - All other fishermen who are present on the same vessel with fishermen referred to in (a) in order to ensure the protection of the overall safety and health.

Provisions regarding the *vessel* **and** the *worker*.

# Main provisions of Directive 2017/159

- **Main provisions**
  - Minimum requirements for work on fishing vessels
    - Minimum age, medical certificate
  - Conditions of service
    - Manning, working time, fisherman's work agreement, crew list, repatriation, private labour market services
  - Occupational safety and health
    - Food and accommodation, health protection and medical care,

# Provisions *not* included in the existing EU acquis

- Minimum requirements for **work** on fishing vessels
  - Medical certificate for fitness to work: obligatory for workers on vessels of 24 meters and over or remaining at sea for more than 3 days
  - Extension of the number of hours (from 8 to 9 hours) considered night work for the prohibition of work of people under 18

# Provisions not included in the existing EU acquis

- Conditions of service – **working conditions**
  - Special provisions on the fisherman's work agreement:
    - Procedures to ensure that the fisherman can review and seek advice on the agreement before it is concluded
    - Minimum content: voyage or number of voyages the fisherman is engaged for; the health and social security coverage, etc.
    - Obligation to carry it on board
  - New right of repatriation:
    - When the contract expires/ is terminated or the fisherman cannot perform his duties
    - Not paid by the fisherman except if being in serious default of his obligations



# Provisions *not* included in the existing EU acquis

- **Occupational safety and health**

- Food and water of sufficient quality and quantity to be served on board
- Right to medical treatment ashore and to be taken ashore timely for treatment in case of serious injury or illness
- Right to compensation in case of work-related injury or disease
- Application of certain requirements on accommodation (ventilation, lighting, emergency exits, etc) to all new vessels including those of less than 15 meters (excluded under the previous EU OSH provisions)

# Flexibility in implementation of the agreement

- Scope
  - Possible exclusion of limited categories of fishermen or fishing vessels - limited to 5 years
- Medical certificate
  - Possible exceptions under certain conditions (except for vessels of  $\geq 24$  meters or staying at sea  $>3$  days)
- Working time: possible exceptions including
  - Reference periods under certain conditions

## Next steps ...

- Commission's Expert Group on implementing the Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention meeting on May 13 2019.
- Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with the Directive by **15 November 2019**.

# Union rules insuring decent working conditions for seafarers

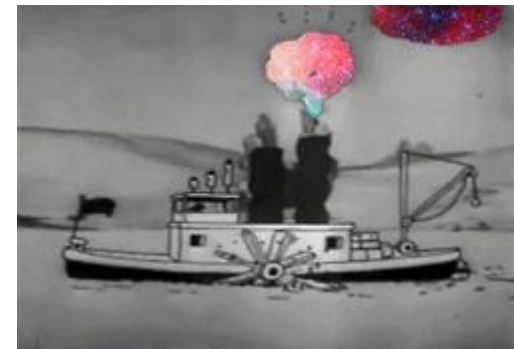




European  
Commission



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Social Europe

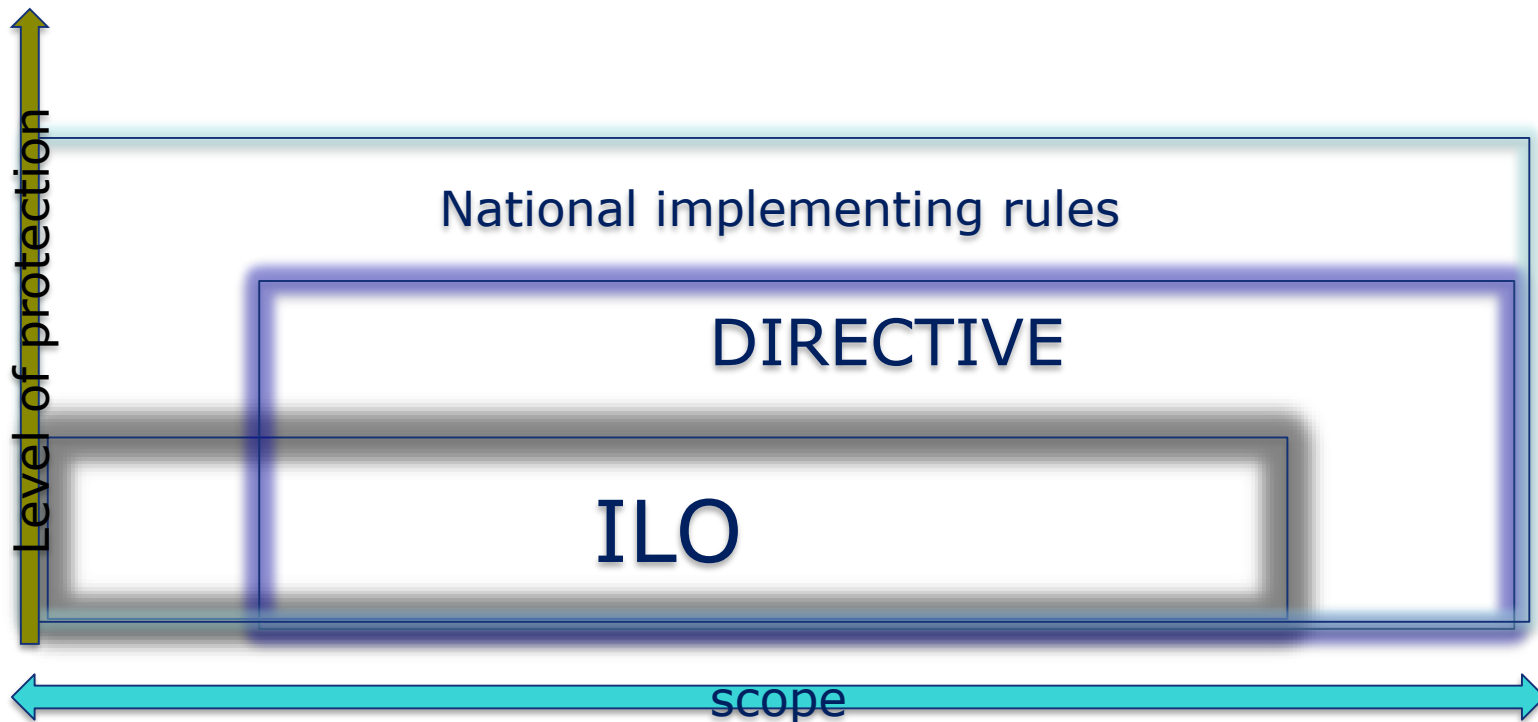
# Directive 1999/63 (significantly) amended by Directive 2009/13



International  
Labour  
Organization



# Minimum standards



# The scope: Clause 1

*The directive applies to seafarers on board of every seagoing ship that is ordinarily engaged in commercial maritime operations registered in a MS*





# Key rules: maximum working hours and minimum rest



OR



a standard working day is 8 hours, with 1 day off and rest on public holidays;  
maximum working hours must not exceed 14 in any 24-hour period or 72 over 7 days

Minimum 10 hours in any 24-hour period, or 77 over 7 days;  
may be divided into no more than 2 periods, one of which must be at least 6 hours;  
must occur within at least 14 hours of each other;  
work



European  
Commission

# Protection of young workers



# Protection of health



# HOLIDAYS



# control



# **Annex to Directive 2009/13: Agreement concluded by the ECSCA and the ETF on the Maritime Labour Convention, 2006**





# scope

In principle all seafarers and ships engaged in commercial activities (other than fishing and ships of traditional build such as dhows and junks )



# minimum requirements for seafarers to work on a ship





# provisions on employment agreement



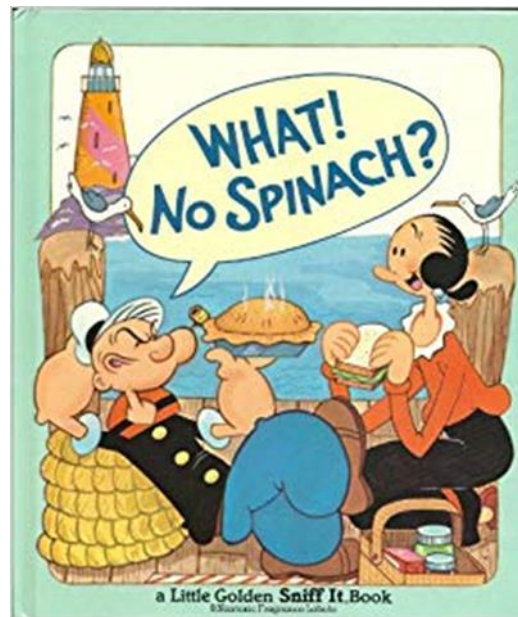
# accommodation, recreational facilities, food and catering



# health protection and prevention



# Standard A5.1.5 — On-board complaint procedures



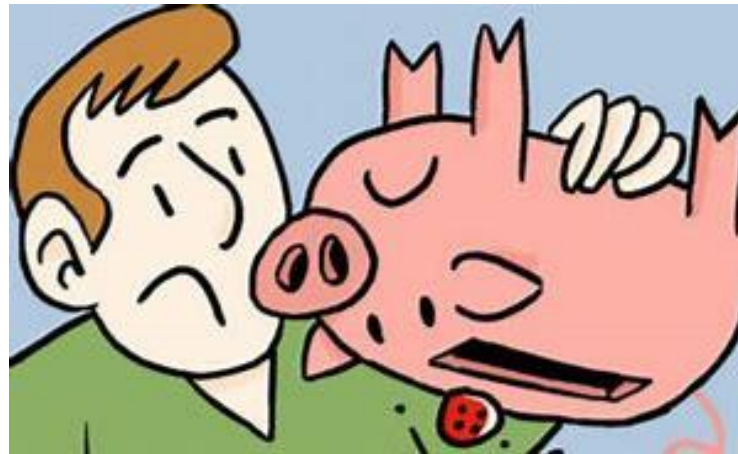
# amendment by Directive 2018/131 and amendments...



# Directive 2015/1794: inclusion of seafarers in 5 Union acts protecting workers



# Directive 2008/94/EC Employer insolvency: share-fishermen included



# **Directive 2009/38/EC European Works Council: merchant navy to be included.**





**Directive 2002/14/EC Information  
and consultation: crews plying the  
high seas (seafarers and  
fishermen) to be included.**



# Directive 98/59/EC Collective Redundancies



# Directive 2001/23/EC: Transfer of undertakings



New Article 1(3): "*This Directive shall apply to a transfer of a seagoing vessel that is part of a transfer of an undertaking, business or part of an undertaking or business within the meaning of paragraphs 1 and 2 [...]*"

However, the Directive does not apply where the object of the transfer consists exclusively of one or more seagoing vessels.





# Union rules on working time in civil aviation: Directive 2000/79/EC



# scope

*“Mobile staff in civil aviation”, i.e. “crew members on board a civil aircraft, employed by an undertaking established in a Member State”.*



# Rest time



a maximum annual working time of 2000 hours, with the total flight time limited to 900 hours, spread as evenly as practicable throughout the year;  
a certain number of days free of all service (7 days per month and at least 96 days per year).

# medical care and accident prevention





# the global picture: need to refer to Regulation 1899/2006





# Other Working Conditions

- *Other (standard and non-standard) working conditions directives*
  - **Young workers**
  - **Written statement of contract**
  - **Insolvency**
- *Non-standard work*
  - **Part-time workers**
  - **Temporary agency workers**
  - **Fixed-term workers**

# Protection of young people at work (94/33/EC)

## Protection of young people at work (94/33/EC)

- *Directive 89/391/EEC – “the Framework Directive”*
  - has 23 related Directives
  - Young people at work Directive is one of them

### Objectives:

- *Prohibit work by children*
- *Strictly regulate and protect young people at work*
- *Ensure that employers guarantee young people working conditions suitable to their age*
- *Protection against economic exploitation and work harmful to safety and health, development or education*

## Article 32 of the EU Charter of Fundamental Rights

*"The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, [...] except for limited derogations.*

*Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education."*

## Directive 94/33/EC (young people)

- *Scope: Any person under 18 having an employment contract or relationship as defined by the Member State*
- *Possible exemptions: Occasional or short-term work involving:*
  - **Domestic service in a private household**
  - **Work not regarded as harmful, damaging or dangerous to young people in a family undertaking**

## Directive 94/33/EC (young people)

- *Prohibits work by children*
  - Child = person of less than 15 years of age or who is **still subject to compulsory full-time schooling**
- *Possible derogations:*
  - **work in cultural or similar activities**
  - **Light work:** Children  $\geq 13$  years old can perform work not likely to be harmful to the safety, health or development of children, and
  - is not harmful to their attendance at school, their participation in vocational guidance or training programmes or their capacity to benefit from the instruction received
- *Regulates and protects work by adolescents*
  - Adolescent = person of at least 15 years of age but less than 18 years of age who is **no longer** subject to compulsory full-time schooling under national law

# Prohibitions & restrictions

- *Prohibits night work by children and restricts such work by adolescents*
- *Restricts the working time of young people*
  - Children: 2 hrs on school days, 12 hrs/week during school term  
7 hrs/day 35 hours/week during school holidays
  - Adolescents: 8 hrs/day, 40 hrs/week

# Prohibitions, restrictions & obligations

- Ensures minimum **rest periods** for children and adolescents
  - **Children: 14 consecutive hours per 24 hours**
  - **Adolescents: 12 consecutive hours per 24 hours**
  - **Both groups: 48 (36) consecutive hours per 7 days**
- Ensures a period of annual rest for children of compulsory school age
- Ensures breaks of minimum 30 min. for young people working more than 4.5 hours
- Prohibits young people from certain specific types of work:



# Work expressly banned for young people

- *work which is objectively beyond their physical or psychological capacity*
- *work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child*
- *work involving harmful exposure to radiation*
- *work involving the risk of accidents which it may be assumed cannot be recognized or avoided by young persons;*
- *work in which there is a risk to health from extreme cold or heat, or from noise or vibration*

# Obligations on employers

- *Conduct a risk assessment*
  - taking specifically into account risks inherent to young people
    - lack of experience
    - absence of awareness of existing or potential risks
    - or from their immaturity
- *Information for workers*
  - inform young people of possible risks and of all measures adopted concerning their safety and health
- *Training of workers*
  - consider the level of training and instruction given to young people in assessing risks

# Specific points in the risk assessment

- *the fitting-out and layout of the workplace and the workstation*
- *the nature, degree and duration of exposure to physical, biological and chemical agents*
- *the form, range and use of work equipment, in particular agents, machines, apparatus and devices,*
- *the arrangement of work processes and operations, and the way these are combined (organisation of work)*
- *the level of training and instruction given to young people*

# Obligations on employers

- *Health surveillance*
  - ensure that workers receive health surveillance appropriate to the safety and health risks they are subject to at work
- *Involve preventive and protective services*
  - could be internal/external, cf. Framework Directive

# **Part-time Work (Directive 1997/81/EC)**

# Purpose of the PT Directive

- Implements the Framework Agreement on Part-Time Work concluded between the Social Partners
- **Main objectives (Clause 1):**
  - Remove discrimination against part-time workers
  - Improve quality of part-time work
  - Facilitate development of part-time work and contribute to the flexible organization of working time, taking into account the needs of employers and workers



# Personal scope and definitions

- **Who is protected?**



**Clause 2:** Part-time workers with an employment contract/relationship as defined under NL (with limited exemptions for casual workers)

However, limits set by C-216/14 *Ruhrlandklinik*

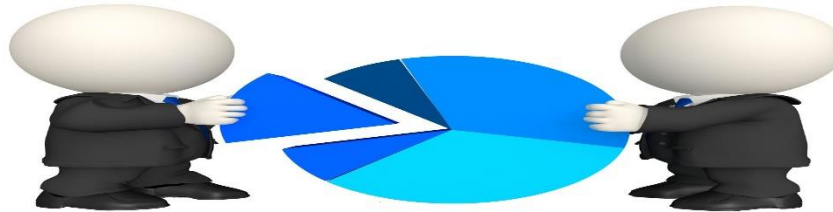
**Clause 3:** definition of a "***part-time worker***" = "*an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker*"



# Key provisions

- **Principle of non-discrimination (Clause 4):**

In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds



- **Encouragement of part-time work (Clause 5):**

Refusal to transfer from full-time to part-time and vice versa is not in itself a valid ground for dismissal

Requests to transfer from full-time to part-time and vice versa should be fairly considered by the employer

Provision of timely information on the availability of part-time and full-time posts, appropriate information to employee reps and the taking of measures to facilitate access to part-time work at all levels of the company



# Temporary Agency Workers (Directive 2008/104/EC)

# Temporary Agency Workers (Directive 2008/104/EC)

## **Scope** (Art. 1):

- Workers employed by a temporary-work agency, assigned to user undertakings to work temporarily under their supervision and direction
- Public and private undertakings engaged in economic activities

**Aim (Art. 2): strikes a balance** between:

- Protection of agency workers and improvement of quality of agency work, by applying equal treatment
- Recognition of agencies as employers, contributing to creation of jobs and development of flexible forms of working

**Definitions (Art. 3):** worker, temporary-work agency, temporary agency worker, user undertaking, assignment, basic working and employment conditions

- ***Equal treatment in the user undertakings (Article 3(1)(f) and 5(1)):*** from the first day of their assignment, the basic working and employment conditions (pay but also duration of working time, overtime, breaks, rest periods, night work, holidays) of agency workers have to be at least those that would apply if they were recruited directly by the user firm to occupy the same job.

***Derogations from the principle of equal treatment are allowed under conditions ((Article 5(2) to 5(4)) :***

- ✓ a) **Member States** may, after consulting the social partners, derogate from **equal pay** with regard to agency workers having a permanent contract **and** being paid between assignments,
- ✓ b) Member States may enable the **social partners** to conclude collective agreements derogating from equal treatment on a variety of issues, **if the overall protection of agency workers** is ensured.

## **Review of restrictions and prohibitions (Art. 4):**

- **Justified only on grounds of general interest**, in particular protection of agency workers, health and safety, ensure that labour market functions properly and abuses are prevented
- Without prejudice to national requirements on registration, licensing, certification, financial guarantees or monitoring of agencies
- Member States must inform Commission on results of review by end of transposition period (December 2011/date of accession)

# **Written Statement Directive & Transparent and Predictable Working Conditions Directive**

# Written Statement Directive (91/533/EEC) To be repealed in 2022

## *OBJECTIVES:*

- *establishes the employer's obligation to **inform employees** of the conditions applicable to the contract or employment relationship.*
- *To this end, every employee must be **provided with a document** containing information on the essential elements of his/her contract or employment relationship.*



# Transparent and Predictable working conditions

	WSD	Political agreement
<b>Personal scope</b>	<p><b>Employees</b> as defined in national law.</p> <p><b>Exemptions:</b> Workers who have contracts of less than 8 hours per week (32 per month), shorter than one month and casual workers can be excluded.</p>	<p><b>Workers</b> as defined in national law with consideration to CJEU case-law.</p> <p><b>Exemptions:</b> Workers who work less than 3 hours per week (12 per month), but not zero-hour contracts workers, can be excluded. Exclusions for seafarers and some public sector workers.</p>
<b>Information on working conditions</b>	<p>Within <b>2 months</b></p> <p>Information on: Identity of parties; Place of work; Specification of work; Starting date; Duration (for temporary contracts); Paid leave; Notice period; Remuneration; Length of working day or week; Applicable collective agreements; and additional information for expatriate employees.</p>	<p>Basic information between the <b>1st and the 7th day</b>; supplementary information within 1 month.</p> <p>In addition to current elements, information on: probation (if any); training; overtime; working time for workers with variable work schedules; social security institutions; for temporary agency workers, information about the enterprises where they will be sent to work.</p>

	WSD	Political agreement
New material rights	-	<ul style="list-style-type: none"> <li>• Limit of <b>probationary</b> periods to 6 months, unless objectively justified</li> <li>• Ban on <b>exclusivity clauses</b> and restrictions on incompatibility clauses</li> <li>• Workers with <b>variable working schedules</b> determined by the employer (i.e. on-demand work) should know in advance when they can be requested to work.</li> <li>• Right to <b>compensation</b> when the employer cancels the work assignment after a specific deadline.</li> <li>• Prevention of <b>abusive practices</b> regarding on-demand contracts.</li> <li>• Right to request a more stable form of employment and to receive a <b>reasoned written reply</b></li> <li>• Right to <b>cost-free mandatory training</b></li> <li>• Cost-free mandatory training must count as <b>working time</b> and, where possible, take place during working hours.</li> </ul>
Enforcement	General defence of rights article but mainly left to national level	Comprehensive <b>enforcement</b> provisions: early settlement mechanism or favourable legal presumption in case of missing information; right to redress; protection against adverse consequences; protection from dismissal and shared burden of proof; effective, proportionate and dissuasive penalties.



# The role of collective bargaining

## Collective Agreements

- Member States may allow Social Partners to ***maintain, negotiate, conclude and enforce collective agreements*** which establish arrangements which differ from Article 7 to 11.
- Trade-offs are possible, but overall protection of workers must be respected.
- Level of collective agreements is left to national law or practice

## Social dialogue

Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance the social dialogue with a view to implementing this Directive.

## Transposition

As for other labour law Directives, Member States can entrust Social Partners with the transposition if they can guarantee at all times the results imposed by the Directive.

## NEXT STEPS

European Parliament and Council of the European Union to formalise their agreement in April.



Entry into force before the summer



New rights in all workplaces by  
2022

# **Fixed-Term Work Directive 1999/70/EC**

# Fixed-Term Work

## (Directive 1999/70/EC)

- Implements the Framework Agreement on Fixed-Term work concluded between the Social Partners (management and labour)
- Sets out the general principles and minimum requirements relating to fixed-term work
- MAIN OBJECTIVES:
  - No discrimination against fixed-term workers
  - Prevent abuse of successive fixed-term contracts

## KEY PROVISIONS:

### Definitions (clause 3):

**"fixed-term worker"** means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

Any worker that is not a permanent worker

## KEY PROVISIONS:

### Definitions (clause 3):

**"comparable permanent worker"** means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills.



## KEY PROVISIONS:

### Definitions (clause 3):

**"comparable permanent worker"** means a worker with an employment contract or relationship of indefinite duration, **in the same establishment**, engaged in the same or similar work/occupation, due regard being given to qualifications/skills.

Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice."

## KEY PROVISIONS:

### **Principle of non-discrimination (clause 4):**

"In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds"

## KEY PROVISIONS:

### Principle of non-discrimination (clause 4):

"In respect of **employment conditions**, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds"

## KEY PROVISIONS:

### **Principle of non-discrimination (clause 4):**

"In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on **objective grounds**"

## KEY PROVISIONS:

### **Measures to prevent abuse (clause 5):**

Member States must adopt (when there are no other equivalent measures) one or more of the following limits:

- Objective reasons
- Maximum total duration
- Maximum number of renewals

## KEY PROVISIONS:

### Measures to prevent abuse (clause 5):

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# **Safety and health at work of workers with a fixed-duration**

## **Directive 91/383/EEC**



# Directive 91/383/EEC

## OBJECTIVE

To ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment

# Directive 91/383/EEC

## CONTENT

A more specific obligation related with the principle of non-discrimination (Clause 4 of Directive 1999/70/CE) related to:

- Information
- Training
- Medical surveillance
- Protection and prevention services

# **Employer Insolvency Directive Directive 2008/94/EC**

# Employer Insolvency Directive

## (Directive 2008/94/EC)

- **OBJECTIVE:**

*Provision of minimum protection for employees in the event of the insolvency of their employer*

- **KEY PROVISIONS:**

- *definitions (Article 2)*
- *establishment of an independent guarantee body (Article 5)*
- *guarantee for payment of employees' outstanding claims (Articles 3,4)*
- *guarantees regarding Social Security (Articles 7,8)*
- *transnational situations (Articles 9, 10)*

## **GUARANTEE INSTITUTION**

MS shall define detailed rules for the **organisation, financing and operation of the guarantee institutions**, complying with the following principles in particular:

- a) the assets of the institutions must be independent of the employers' operating capital and be inaccessible to proceedings for insolvency;
- b) employers must contribute to financing, unless it is fully covered by the public authorities;
- c) the institutions' liabilities must not depend on whether or not obligations to contribute to financing have been fulfilled.

## CONTENT OF THE GUARANTEE

- **Article 3**
  - “Outstanding claims” (a broader concept than unpaid wages)
  - Severance pay when provided by national law
- **Article 7**
  - Compulsory contributions under national statutory social security schemes
- **Article 8**
  - Old-age benefits outside the national statutory social security schemes.

## LIMITS TO THE GUARANTEE

- **Temporary limits**

- 3 months / reference period of 6 months
- 8 weeks / reference period of 18 months

(they do not apply to compulsory contributions or old-age benefits)

- **Ceilings on the payments**

- Outstanding claims: without putting at risk the social objective of the Directive
- Old-age benefits: the CJEU has clearly stated that the ceiling cannot be under 50% of the right

## TRANSNATIONAL SITUATIONS

The institution responsible is that of the Member State where the worker habitually worked

(as defined by the CJEU case-law)



# **\*How to transpose the EU acquis?\***

## ***The "to-do list"***

## *1. Study the given directive*

- ✓ **What is its purpose? (Keep in mind Art 288 (3) TFEU)**
- ✓ **What is the personal and material scope?**
- ✓ **Detect imperative and voluntary provisions and open norms**

## *2. Scan your legislation*

- ✓ **Statutes, regulations, collective agreements, case law**

## *3. Compare with the given directive*

## *4. Do the necessary legislative changes*

## *5. Fill out the concordance table*



**Thank you!**

