

bb/wts

**A STUDY OF WORKING TIME:
EXTENT OF COVERAGE OF SECTORS AND ACTIVITIES
EXCLUDED FROM THE WORKING TIME DIRECTIVE
IN NATIONAL REGULATIONS
OF THE MEMBER STATES OF THE EUROPEAN UNION**

**Brian Bercusson,
18 Holly Mount,
London NW3 6SG,
Great Britain.**

INTRODUCTION

1. Council Directive 93/104/EC of 22 November 1993 excludes in Article 1(3) the following sectors of activity:

"air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training".
2. This study aims to clarify the extent to which employees working in these excluded sectors and activities enjoy legal protection as regards working time standards laid down in the Directive.
3. This Report and attached Annexes comprise the information collected, summarised and analysed.

METHODOLOGY

4. A questionnaire stipulating the required information was prepared. Correspondents in Member States were requested to complete the questionnaire to obtain the information. A meeting with correspondents was held in Brussels. Other sources (trade union and employer organisations, the European Foundation for the Improvement of Living and Working Conditions) were contacted.
5. The three legal forms identified as primary were general legislative regulation, sector-specific legal regulation and collective bargaining agreements.
6. There are (at least) 3 possible axes around which regulation could vary:
 - among Member States
 - among aspects of working time¹
 - among sectors.

¹. I.e. as among minimum daily rest breaks, weekly rest, maximum working week, annual leave, and night work.

bb/wts

7. The data collected was organised along these axes. But there are variations even within each axis, as the following paragraphs indicate.

THE DATA

8. Precise determination of the substantive level of working time standards in various sectors is not possible on the data available. Other studies of specific sectors, which the Study drew upon, have met with very uneven success.

Variation of legal form among Member States

9. There is no apparent uniformity or consistency among Member States' regulation. The only clearly evident case is that of road transport, where EC Regulation 3820/85 has had a harmonizing impact with regard to the aspects of working time it covers.

Variation of legal form among aspects of working time

10. An overview indicates that, in a specific sector, the legal form of regulation does not change as between different aspects of working time. If the Member State has opted for a specific form of regulation of working time (whether sector specific, by collective agreement, or subjecting it to general legislation), the same legal form applies to many aspects of daily/weekly working time governed by the Directive. This is less than surprising since it would be onerous to adopt separate legislation for each aspect of daily/weekly working time.
11. The exceptions seem to be annual leave and, to a lesser extent, night work. For historical reasons, distinct regulatory forms govern these. When they do, they tend to affect all sectors uniformly.

Variation of legal form among sectors

12. Where Member States do exclude certain sectors, there is a degree of consistency in how these sectors are treated, at least among the transport sectors. Member States may:

bb/wts

- exclude transport from general legislation on working time, or
 - allow for exceptions, and the competent authorities exercise this exception with respect to transport sectors, or
 - provide sector specific regulation.
13. However, once the exclusion or exception is achieved, the requisite sector specific standards are often refined through collective agreements.

Problems Arising from Exclusion of Sectors

Definition of sectors

14. The Directive does not provide any definition of what is included in the sectors listed in Article 1(3). This gives rise to difficulties, as in the following examples.
- a. Transport sectors
15. What are the "sectors of activity, both public and private" covered by the term "air, rail, road, sea, inland waterway, and lake transport"?
16. Are transport activities associated with other sectors covered? For example, enterprises which maintain a fleet of transport vehicles? Are workers employed on these transport activities covered by the Directive?
17. How central to the main activity of the employer must transport be to come within the excluded sector? Is only the marketing of transport services covered? For example, travelling canteens: is this transport (of food) or provision of services (which happen to be transported)? If they are covered, then any services which are at all mobile might be covered.
18. If any activity with transport is covered, the Directive could exclude parts of many other activities (e.g.

bb/wts

travelling to and from work!) which were an essential part of another activity (e.g. travelling salesmen).

bb/wts

b. Doctors in training

19. In some countries (e.g. France) there are two types of doctors in training: student doctors, and trained doctors undergoing further training. How far are the latter covered? Only during their training period? Can this be separated easily from their ordinary work? What about so-called permanent training? How are working hours to be calculated if training hours are included (cf. the Young Workers' Directive 94/33 of 22 June 1994, which distinguishes working time and training time)?

c. Non-mobile staff

20. The Directive's application to workers in excluded sectors, whose activities are identical to workers covered by the Directive, is unclear. The activities of such workers (who are non-mobile in transport sectors, analogous workers who are non-fishing, non-"other work at sea", non-medical activities) are often the subject of rules which distinguish them from other (e.g. mobile) workers in the sectors concerned in Member State regulations and collective agreements on working time. The lack of an explicit distinction in the Directive, e.g. between mobile and non-mobile workers in the transport sectors, leaves the position at EU level ambiguous.
21. The distinction of mobile and non-mobile staff is sometimes made in national law, as when national legislation regulating working time in general is derogated from by collective agreements which distinguish mobile and non-mobile staff. It may be that in one excluded sector this distinction is made, but not in another. If the Member State's general law incorporates the Directive (without excluding sectors) and applies to both mobile and non-mobile staff, it should apply to all employees in an excluded sector. If there is explicit reference to mobile staff in an agreement, then the general law should continue to apply to non-mobile staff.

Definition of terms in national law

22. Certain terms in the Directive appear in Member State legislation (e.g. "night work"). Whether or not this is defined in national legislation, it must be interpreted

bb/wts

consistently with the Directive (the doctrine of "indirect effect").²

23. National legislation may apply also to sectors excluded by the Directive. The question arises whether the interpretation of these terms in national law applicable to those excluded sectors will be the same as that applicable to sectors covered by the Directive. This seems likely as otherwise two different interpretations of the same legislation would be necessary.

Member State regulation of excluded sectors

24. Before accommodating the Directive, the general principles of working time may be dealt with in general working time legislation. In different sectors there may also be collective agreements.
25. When the general legislation is amended to comply with the Directive, it may or may not exclude the sectors excluded by the Directive.
26. If not, then the amended Member State legislation will apply to the sectors excluded by the Directive. To this extent, the exclusions of the Directive are without effect as the sectors will be covered by Member State legislation (which incorporates the Directive's requirements). The Directive does not apply to the excluded sectors directly, but, through its incorporation into national law which may not exclude these sectors, it applies indirectly. This is within Member State competence.
27. However, if national legislation or collective agreements are not compatible with the Directive, where these cover excluded sectors, there is no violation of the Directive.
28. Similarly, where former Member State law, which did not comply with the Directive's requirements, is replaced by new implementing legislation. If this new legislation is broadly compatible, but violates the Directive in one or

². Case C-106/89: Marleasing Ltd v. La Comercial Internacional de Alimentacion [1990] European Court Reports I-4135, paragraph 8.

bb/wts

more respects (intentionally or otherwise), the excluded sectors will be covered by legislation, but there will be no violation as regards them, as they are not covered by Directive.

Problems in light of the Directive

29. The objection to the Directive may be less to the substantive standards established (which are not widely regarded as excessively high), than to the fear that it may not allow the flexibility required by specific sectoral exigencies.
30. In particular:
 - sometimes there is exclusion of transport sectors from general legislation, but not always;
 - sometimes there is provision for exceptional cases in general; transport and hospital work have often received exceptional treatment by the competent authorities;
 - the distinction among categories of workers (mobile/non-mobile, by occupation, seniority, and so on) is not uncommon - in legislation, sectoral regulations, or collective agreements;
 - it is common for general legislation or sectoral regulation to be complemented by collective agreements.
31. The need may be rather to propose a legal form of regulation which meets this objection and allows the requisite flexibility. The following Tables address this by looking more to the legal forms adopted by the Member States in different sectors with regard to various aspects of working time covered by the Directive.

bb/wts

TABLE 1

AIR TRANSPORT

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	A, B, FI, IR, S, SW	F, IR, P, S, SW	A, B, DE, G, I, P, S, SW
<u>Min. daily rest</u>	A, B, DE, D, FI, G, I, IR, L, S, SW	F, I, IR, P, S, SW	A, B, DE, G, I, P, S, SW
<u>Weekly rest</u>	B, DE, D, FI, G, I, IR, L, S, SW	F, IR, P, S, SW	A, B, DE, G, I, P, S, SW
<u>Max. working week</u>	A, B, DE, D, FI, G, I, IR, L, SW	F, IR, P, S, SW	A, B, DE, D, G, I, P, S, SW
<u>Annual leave</u>	A, B, DE, D, FI, G, I, IR, L, N, S, SW	IR, P, S, SW	B, DE, D, G, I, L, P, S, SW
<u>Night work</u>	B, DE, D, FI, I, IR, S, SW	F, IR, P, SW	B, DE, I, P, SW

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

AIR TRANSPORT

Number of Member States in which general legislation applies:

Annual leave	-	12
Min. daily rest	-	11
Weekly rest	-	10
Max. working week	-	10
Night work	-	8
Breaks	-	6

Number of Member States in which collective agreements operate:

Annual leave	-	9
Max. working week	-	9
Min. daily rest	-	8
Weekly rest	-	8
Breaks	-	8
Night work	-	5

Number of Member States in which general legislation is complemented by collective agreements:

Max. working week	-	8	(A, B, DE, D, G, I, S, SW) 9 (P) if sectoral regulation included)
Annual leave	-	7	(B, DE, D, G, I, S, SW) 8 (P) if sectoral regulation included)
Min. daily rest	-	7	(A, B, DE, G, I, S, SW) 8 (P) if sectoral regulation included)
Weekly rest	-	6	(B, DE, G, I, S, SW) 7 (P) if sectoral regulation included)
Breaks	-	4	(A, B, S, SW) 5 (P) if sectoral regulation included)
Night work	-	4	(B, DE, I, SW) 5 (P) if sectoral regulation included)

Number of Member States in which there is (additional) sectoral regulation varies between 4-6. Usually: F, IR, P, S, SW.

bb/wts

TABLE 2

INLAND WATERWAY TRANSPORT

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	A, B, S, IR, N, P, SW	FI, I, N	A, B, DE, P
<u>Min. daily rest</u>	A, B, DE, D, I, IR, L, N, P, S, SW	FI, I, N	A, B, DE, P
<u>Weekly rest</u>	B, DE, D, IR, I, N, L, P, S, SW	FI, I, N	A, B, DE, P
<u>Max. working week</u>	A, B, DE, D, I, IR, L, N, P, S, SW	FI, F, I, N, SW	B, DE, D, P
<u>Annual leave</u>	A, B, DE, D, FI, I, IR, L, N, P, S, SW	I, N	B, DE, D, L, P
<u>Night work</u>	B, DE, D, I, IR, N, P, S	FI, I, N	B, DE, P

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

INLAND WATERWAY TRANSPORT

Number of Member States in which general legislation applies:

Annual leave	-	12
Min. daily rest	-	11
Max. working week	-	11
Weekly rest	-	10
Night work	-	8
Breaks	-	7

Number of Member States in which collective agreements operate:

Annual leave	-	5
Max. working week	-	4
Min. daily rest	-	4
Weekly rest	-	4
Breaks	-	4
Night work	-	3

Number of Member States in which general legislation is complemented by collective agreements:

Annual leave	-	5	(B, DE, D, L, P)
Max. working week	-	4	(B, DE, D, P)
Min. daily rest	-	4	(A, B, DE, P)
Weekly rest	-	3	(B, DE, P)
Breaks	-	3	(A, B, P)
Night work	-	4	(B, DE, P)

Number of Member States in which there is (additional) sectoral regulation varies between 2-6. Usually: FI, I, N.

bb/wts

TABLE 3

RAIL TRANSPORT

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	A, B, FI, S, IR, SW	F, I,	A, B, DE, G, I, P, S, SW
<u>Min. daily rest</u>	A, B, DE, D, FI, I, IR, L, N, S, SW	F, I, N	A, B, DE, G, I, P, S, SW
<u>Weekly rest</u>	A, B, DE, D, FI, I, IR, L, N, S, SW	F, I, N	A, B, DE, G, I, P, S, SW
<u>Max. working week</u>	A, B, DE, D, FI, I, IR, L, N, S, SW	F, I, N	A, B, DE, D, I, P, S, SW
<u>Annual leave</u>	A, B, DE, D, FI, I, IR, L, N, S, SW	N	A, B, DE, D, I, L, P, S, SW
<u>Night work</u>	B, DE, D, FI, I, IR, N, S, SW	F, N	B, DE, G, I, P, SW

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

RAIL TRANSPORT

Number of Member States in which general legislation applies:

Annual leave	-	11
Min. daily rest	-	11
Weekly rest	-	11
Max. working week	-	11
Night work	-	9
Breaks	-	6

Number of Member States in which collective agreements operate:

Annual leave	-	9
Max. working week	-	8
Min. daily rest	-	8
Weekly rest	-	8
Breaks	-	8
Night work	-	6

Number of Member States in which general legislation is complemented by collective agreements:

Annual leave	-	8	(A, B, DE, D, I, L, S, SW)
Max. working week	-	7	(A, B, DE, D, I, S, SW)
Min. daily rest	-	6	(A, B, DE, I, S, SW)
Weekly rest	-	6	(A, B, DE, I, S, SW)
Breaks	-	4	(A, B, S, SW) 5 (I) if sectoral regulation included)
Night work	-	4	(B, DE, I, SW)

Number of Member States in which there is (additional) sectoral regulation varies between 1-3. Usually: F, I, N.

bb/wts

TABLE 4

ROAD TRANSPORT

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	A, B, FI, IR, S, N, P, SW	B, DE, D, F, G, IR, N, SW, UK	DE, P, S, SW
<u>Min. daily rest</u>	A, B, DE, D, FI, G, I, IR, L, N, P, S, SW	B, DE, D, FI, F, I, IR, N SW, UK	A, DE, D, P, S, SW
<u>Weekly rest</u>	A, B, DE, D, FI, G, I, IR, L, N, P, S, SW	B, FI, F, I, IR, N, SW, UK	A, DE, P, S, SW
<u>Max. working week</u>	A, B, DE, D, FI, G, I, IR, L, N, P, S, SW	B, DE, D, F, I, IR, N, SW, UK	A, DE, D, P, SW
<u>Annual leave</u>	A, B, DE, D, FI, I, IR, L, N, P, S, SW	B, F, G, IR N, UK	DE, D, L, P, S, SW
<u>Night work</u>	B, DE, D, FI, I, IR, N, P, S, SW	B, I, IR, N, UK	DE, D, P, S, SW

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

ROAD TRANSPORT

Number of Member States in which general legislation applies:

Min. daily rest	-	13
Weekly rest	-	13
Max. working week	-	13
Annual leave	-	12
Night work	-	10
Breaks	-	8

Number of Member States in which collective agreements operate:

Annual leave	-	6
Min. daily rest	-	6
Max. working week	-	5
Weekly rest	-	5
Night work	-	5
Breaks	-	4

Number of Member States in which general legislation is complemented by collective agreements:

Annual leave	-	6	(DE, D, L, P, S, SW)
Min. daily rest	-	6	(A, DE, D, S, P, SW)
Max. working week	-	5	(A, DE, D, P, SW)
Weekly rest	-	5	(A, DE, P, S, SW)
Night work	-	5	(DE, D, P, S, SW)

Same 3 Member States appear in all 5: (DE, P, SW).

Breaks	-	3	(P, S, SW)
		4	(DE) if sectoral regulation included)

Number of Member States in which there is (additional) sectoral regulation varies between 5-10. Unusually many, probably due to EC Regulation 3850/85.

E.g. Sector regulations apply for all aspects of working time in B, IR, N, UK; in F, for all but night work.

TABLE 5SEA TRANSPORT

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	A, B, IR, N, P, S, SW	FI, I, N, P, SW	A, B, DE, D, G, I, SW, UK
<u>Min. daily rest</u>	A, B, DE, D, G, I, IR, N, P, S, SW	FI, F, I, N, SW	A, B, DE, I, P, SW, UK
<u>Weekly rest</u>	A, B, DE, D, G, I, IR, N, P, S, SW	FI, F, I, N, SW	A, B, DE, G, I, P, SW, UK
<u>Max. working week</u>	A, B, D, I, IR, N, P, S SW	FI, F, I, N SW	B, DE, D, I, P, S, SW, UK
<u>Annual leave</u>	A, B, DE, D, FI, G, I, IR, N, P, S, SW	F, I, N, P	B, DE, D, G, I, P, S, UK
<u>Night work</u>	B, DE, D, G, I, IR, N, P, S	FI, F, I, N, P	B, DE, D, I UK

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

SEA TRANSPORT

Number of Member States in which general legislation applies:

Annual leave	-	12
Min. daily rest	-	11
Weekly rest	-	11
Max. working week	-	9
Night work	-	9
Breaks	-	7

Number of Member States in which collective agreements operate:

Annual leave	-	8
Max. working week	-	8
Weekly rest	-	8
Breaks	-	8
Min. daily rest	-	7
Night work	-	5

Number of Member States in which general legislation is complemented by collective agreements:

Annual leave	-	7	(B, DE, D, G, I, P, S)
Weekly rest	-	7	(A, B, DE, G, I, P, SW)
Min. daily rest	-	6	(A, B, DE, I, P, SW)
Max. working week	-	6	(B, D, I, P, S, SW)
Night work	-	4	(B, DE, D, I)
Breaks	-	3	(A, B, SW)

Number of Member States in which there is (additional) sectoral regulation varies between 4-5 (always F, FI, N; all but one, Italy).

bb/wts

TABLE 6

SEA FISHING

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	B, IR, N, P, S, SW	FI, F, N	B, DE, I, P, S
<u>Min. daily rest</u>	B, DE, D, I, IR, N, P, S, SW	FI, F, N	B, DE, I, P, S
<u>Weekly rest</u>	B, DE, D, I, IR, N, P, SW	FI, F, N	B, DE, I, P, S
<u>Max. working week</u>	B, D, I, IR, N P, S, SW	FI, F, N	B, DE, D, I P, S
<u>Annual leave</u>	B, DE, D, FI, I, IR, N, P, S, SW	F, N	B, DE, D, I P, S
<u>Night work</u>	B, DE, D, I, IR, N, P, S	FI, N	B, DE, I, P, S

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

SEA FISHING

Number of Member States in which general legislation applies:

Annual leave	-	10
Min. daily rest	-	9
Weekly rest	-	8
Max. working week	-	8
Night work	-	8
Breaks	-	6

Number of Member States in which collective agreements operate:

Annual leave	-	6
Max. working week	-	6
Weekly rest	-	5
Breaks	-	5
Min. daily rest	-	5
Night work	-	5

Number of Member States in which general legislation is complemented by collective agreements:

Annual leave	-	6	(B, DE, D, I, P, S)
Min. daily rest	-	5	(B, DE, I, P, S)
Max. working week	-	5	(B, D, I, P, S)
Night work	-	5	(B, DE, I, P, S)
Weekly rest	-	4	(B, DE, I, P)
Breaks	-	3	(B, P, S)

Number of Member States in which there is (additional) sectoral regulation varies between 2-3 (always N; usually FI and/or F).

bb/wts

TABLE 7

OTHER WORK AT SEA

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	IR, N, S	FI	DE, I, S, UK
<u>Min. daily rest</u>	DE, I, IR, S, N	FI	DE, I, S, UK
<u>Weekly rest</u>	B, DE, I, IR, N, S	FI	DE, I, S, UK
<u>Max. working week</u>	I, IR, N, S	FI	DE, I, S, UK
<u>Annual leave</u>	DE, FI, I, IR, N, S		DE, I, S, UK
<u>Night work</u>	DE, I, IR, S, N	FI	DE, I, S, UK

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

OTHER WORK AT SEA

Number of Member States in which general legislation applies:

Annual leave	-	6
Weekly rest	-	6
Min. daily rest	-	5
Night work	-	5
Max. working week	-	4
Breaks	-	3

Number of Member States in which collective agreements operate:

Annual leave	-	4
Max. working week	-	4
Weekly rest	-	4
Breaks	-	4
Min. daily rest	-	4
Night work	-	4

Number of Member States in which general legislation is complemented by collective agreements:

Annual leave	-	3	(DE, I, S)
Min. daily rest	-	5	(DE, I, S)
Night work	-	3	(DE, I, S)
Weekly rest	-	3	(DE, I, S)
Max. working week	-	2	(I, S)
Breaks	-	1	(S)

Only Finland has (additional) sectoral regulation, in all but annual leave.

TABLE 8DOCTORS IN TRAINING

	<u>General legis.</u>	<u>Sector reg.</u>	<u>Coll. agree.</u>
<u>Breaks</u>	A, FI, IR, N, S, SW	N, P	A, SW
<u>Min. daily rest</u>	A, B, DE, D, FI, I, IR, L, N, S SW	N, P	A, B, G, SW
<u>Weekly rest</u>	A, B, DE, D, FI, I, IR, L, N, S SW	D, N, P	A, B, DE, D, I, L, S, SW
<u>Max. working week</u>	A, B, D, FI, I, IR, L, N, S, SW	I, N, P	A, DE, F, G, I, UK, SW
<u>Annual leave</u>	A, B, DE, D, FI, I, IR, L, N, S SW	N, P	A, DE, D, I, L, SW
<u>Night work</u>	B, DE, D, FI, I, IR, N, S, SW	N, P	DE, SW

A = Austria
B = Belgium
DE = Denmark
D = Germany
FI = Finland

F = France
G = Greece
IR = Ireland
I = Italy
L = Luxembourg

N = Netherlands
P = Portugal
S = Spain
SW = Sweden
UK = United Kingdom

bb/wts

DOCTORS IN TRAINING

Number of Member States in which general legislation applies:

Annual leave	-	11
Min. daily rest	-	11
Weekly rest	-	11
Max. working week	-	10
Night work	-	9
Breaks	-	6

Number of Member States in which collective agreements operate:

Weekly rest	-	8
Max. working week	-	7
Annual leave	-	6
Min. daily rest	-	4
Breaks	-	2
Night work	-	2

Number of Member States in which general legislation is complemented by collective agreements:

Weekly rest	-	8	(A, B, DE, D, I, L, S, SW)
Annual leave	-	6	(A, DE, D, I, L, SW)
Min. daily rest	-	3	(A, B, SW)
Max. working week	-	3	(A, I, SW)
Night work	-	2	(DE, SW)
Breaks	-	2	(A, SW)

Number of Member States in which there is (additional) sectoral regulation varies between 2-3 (always N, P).

bb/wts

32. With the limitations of the data in mind, the following conclusions can be hazarded.

33. The aspects of working time most frequently governed by general legislation in the Member States are:

Annual leave (1st in all sectors but road transport, where a close 2nd)

Min. daily rest (close 2nd or equal 1st in all but road transport, where 1st)

Weekly rest (2nd or close 3rd in all sectors)

Max. working week (3rd or 4th (except close 5th in other work at sea))

Night work, and particularly breaks, tend to trail behind in terms of general legislation.

34. The aspects of working time most frequently governed by collective agreements tend to follow the same order, except that maximum working week is somewhat higher in the list, slightly more frequently the subject of collective agreements.

35. The same order appears more or less when looking to a combination of regulation by general legislation and collective agreements.

Combining legislation and collective bargaining

36. Member States combine general legislation and collective agreements with respect to aspects of working time in the following sectors: (number in brackets is number of aspects of working time out of a possible total of 6)

A air (3)
inland waterway (1)
rail (5)
road (3)
sea (3),
doctors in training (5).

bb/wts

B air (6)
inland waterway (6)
rail (6)
sea (5)
fishing (6).
doctors in training (2)

DE air (5)
inland waterway (5)
rail (5)
road (5)
sea (4)
fishing (4)
other work at sea (4)
doctors in training (3).

D air (2)
inland waterway (2)
rail (2)
road (4)
sea (3)
fishing (2)
doctors in training (2)

G air (4)
sea (2)

I air (5)
rail (5)
sea (5)
fishing (5)
other work at sea (4)
doctors in training (3).

L inland waterway (1)
rail (1)
doctors in training (2)

P inland waterway (6)
road (6)
sea (4)
fishing (6)

bb/wts

S air (5)
 rail (5)
 road (5)
 sea (2)
 fishing (5)
 other work at sea (6).
 doctors in training (1)

SW air (6)
 rail (6)
 road (6)
 sea (4)
 doctors in training (6).

37. In 8 Member States (A, B, DE, D, I, P, S, SW), the combination was to be found in 4 or more of the (8) excluded sectors.
38. In G and L the combination was found in a minority of excluded sectors.
39. In 5 Member States there was not noted a combination of general legislation and collective bargaining in any sector for any aspect of working time: FI, F, IR, N, UK. This may reflect a wholesale reliance on one method (collective bargaining in the UK, IR; regulation in FI, F and N).

The role of collective bargaining

40. The data indicate that collective bargaining on one or more aspects of working time takes place in the Member States in the following sectors:

Air: All but 5 (FI, F, IR, N, UK).³

Rail: All but 5 (FI, F, IR, L, N, UK).⁴

³. At least some of these anomalies may be due to deficiencies in the data. There are certainly collective agreements in the UK.

⁴. At least some of these anomalies may be due to deficiencies in the data. There are certainly collective agreements in F and the UK.

bb/wts

Sea: All but 5 (FI, F, IR, L, N).⁵

Doctors in training: All but 4 (FI, IR, N, P).

Road: Only 7 (A, DE, D, L, P, S, SW).

Fishing: Only 6 (B, DE, D, I, P, S).

Inland waterway: Only 5 (A, B, DE, L, P).

Other work at sea: Only 4 (DE, I, S, UK).

41. Where collective bargaining takes place on one or more aspects of working time, there seems little reason why the scope of bargaining could not be enlarged to include other aspects.
42. Where collective bargaining is not present, regulation fills the gap.

CONCLUSIONS

43. Variation in legal form of regulation is among Member States and sectors, not as regards aspects of working time.
44. Regarding minimum daily rest, breaks, weekly rest, and maximum working week, the same legal form of regulation predominates in each Member State (though it differs among Member States), though this may vary across sectors in the same Member State.
45. Regarding annual leave and, to a lesser extent, night work, there is separate legal regulation, but tending not to vary across sectors in the same Member State.

⁵. At least some of these anomalies may be due to deficiencies in the data. There are certainly collective agreements in F and N.

bb/wts

46. There is a tendency to exclude certain sectors from general working time regulation, though the legal form adopted for this varies among Member States.
47. Collective bargaining plays an important role in formulating the sector specific standards, whether sectors are excluded or included in general working time regulation in a Member State.

Policy implications

48. The above indicates that, in the excluded sectors, the form of regulation does not change as between different aspects of working time.
49. If the Member State has opted for a specific form of regulation (whether sector specific in some cases, by collective agreement, or subjecting it to general legislation) it may apply to most or all the aspects of working time governed by the Directive.
50. The cleavages are among Member States and the legal forms of regulation they choose for each sector.
51. The alternatives for EU regulation would seem to be:
 - an opt-out for Member States as regards certain sectors (subject to safeguards, as below);
 - a flexibilisation measure (through derogation by collective agreement).
52. Collective bargaining appears to be one formal feature distinguishing Member States' regulation of working time in these sectors, whether excluded or not from their general legislation. This is consistent with the Directive's strategy of flexibilisation through social dialogue.
53. If cleavages lie across sectors (i.e. different treatment for different sectors as regards aspects of working time), the consequence is that separate regulation for each sector is required. The choice is between:

bb/wts

- a. EU working time standards crafted to sectoral exigencies, or
 - b. the general standards of the Directive applied (more or less) to the sector, with possible derogations by collective agreement (or other legal forms).
54. The problem with (a) - EU working time standards crafted to sectoral exigencies - is that if working time standards different from those in the Directive had to be crafted to the specific exigencies of individual excluded sectors, an overview of substantive working time standards in these sectors in the different Member States does not, in my overview, reveal sufficient homogeneity. My conclusions can be summarised as follows:
- i. it would be difficult, if not impossible to craft general working time standards applicable to one of the sectors which would satisfy all Member States;
 - ii. it would still be necessary to provide a mechanism for flexibility for individual Member States to adapt any general sector-specific standards to the exigencies of the sector in their own territory;
 - iii. any such EU sector-specific working time standards would not be so different from the, as stated previously, not excessively exigent standards already provided in the Directive;
 - iv. the most straightforward solution would be to include these sectors under the general rubric of the Directive, and allow them to utilise the collective bargaining derogation mechanism already available in the Directive, and, in practice, already most commonly employed in the Member States to achieve the requisite flexibility in these sectors.
55. A modified form of (b) - application of the Directive - would distinguish among 2 categories of sectors.
- i. sectors governed by general or sectoral Member State legislation. The legislation allows for exceptions.

Here there should not be wholesale exclusion of the sector from the Directive. The necessary flexibility is available in the Directive in a

bb/wts

specific legal form: collective agreements.⁶
This is already very common as the form of regulation of working time in the excluded sectors.

ii. sectors excluded from general Member State legislation. There may be a case for genuine exceptionalism. This could be achieved by the Directive allowing Member States to opt out, subject to conditions:

- consultation with social partners;
- minimum health and safety safeguards;
- time limited with prospect of Commission review.⁷

If Member States do not use the sectoral opt-out, the Directive applies, including its provision for flexibility through collective agreements.

56. As stated earlier, however, there is variation among Member States regarding techniques of recognising the exigencies of different sectors. It may end up by counting how many Member States have general exclusion versus how many achieve exceptionality by techniques of flexibilisation. If the latter prevails, the Directive's overall approach can be applied to these sectors as well.

⁶. In some Member States, the flexibility is achieved through sectoral regulation, perhaps because the social partners are not sufficiently organised. Encouragement of such organisation could be one objective of prescribing collective agreements as the form of flexibility. The dynamic of social partner cooperation can be stimulated by concrete Commission proposals.

⁷. Cf. Article 18(1)(b) - the 48-hour opt-out.