

**Second-stage consultation of social partners on
sectors and activities excluded from
working time directive**

UNICE response

1. UNICE has noted the second document for consultation of the social partners at European level on sectors and activities excluded from the working time directive published by the Commission.
2. This document follows on from the debate surrounding the white paper on this theme published by the Commission in 1997. In it, the Commission confirms its intention of adopting a differentiated approach for dealing with this question (option 3 of the white paper). This approach would consist in making a distinction between the activities and sectors which may fall within the scope of directive 93/104/EC and those which require specific sectoral measures, while encouraging the social partners to draw up recommendations and agreements which could constitute the basis for or take the place of Commission proposals.
3. The Commission envisages preparing a framework proposal for amendment of directive 93/104/EC and proposing sectoral provisions based on the solutions worked out by the social partners concerned for mobile workers and off-shore workers.
4. In its response to the white paper, UNICE stressed that it opposed option 3 for the following reasons:
 - the reasons which led to exclusion of some sectors and activities from the scope of directive 93/104/EC still apply;
 - it is not possible to tackle activities as diverse as, say, road transport, trainee doctors and sea fishing in a single directive;

- the distinction between mobile and non-mobile workers is not as clear-cut or as useful as the Commission seems to believe. The activities of non-mobile workers interact closely with those of mobile workers. In addition, in some companies, the same worker may be engaged alternately in mobile and non-mobile activities. Establishment of a distinction between the two types of activity would be prejudicial to this necessary flexibility of functioning and could be harmful to employment.
5. In its response to the white paper, UNICE spoke in favour of a non-binding sectoral approach taking full account of the views of employers in the sectors concerned. It saw no need to propose a generalised legislative approach, notably because of the existence of a statutory and negotiated framework on working time in Member States which provides workers with adequate protection.
 6. In its comments on the responses received, the Commission justifies maintenance of its preference for option 3 by the existence of gaps in the legislation of Member States which need to be remedied by proposing a modification of the legislation at European level. UNICE would like to obtain more information about these gaps. Does the Commission have a study which identifies them and demonstrates the effectiveness of the approach proposed in option 3 for filling them? The Commission's second consultation document contains no elements to allow a judgement.
 7. UNICE has very strong reservations about the proposed definition for "sufficient rest", a notion so vague that it is impossible to work out the potential obligations for employers. In addition, the proposed definition goes well beyond the scope of article 118A of the Treaty since it covers protection of third parties (passengers or other users).

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