


Procedure file

| Basic information | | |
|--|--------------------------------|---------------------|
| INI - Own-initiative procedure | 2003/2165(INI) | Procedure completed |
| Revision of Directive 93/104/EEC on the organisation of working time | | |
| Subject 4.15.03 Arrangement of working time, work schedules | | |

| Key players | | | |
|---------------------|--|--------------------------------------|------------|
| European Parliament | Committee responsible | Rapporteur | Appointed |
| | EMPL Employment and Social Affairs | | 11/06/2003 |
| | | PSE CERCAS Alejandro | |
| | Committee for opinion | Rapporteur for opinion | Appointed |
| | FEMM Women's Rights and Equal Opportunities | | 21/08/2003 |
| | | V/ALE EVANS Jill | |

| Key events | | | |
|------------|--|---|---------|
| 04/09/2003 | Committee referral announced in Parliament | | |
| 22/01/2004 | Vote in committee | | Summary |
| 22/01/2004 | Committee report tabled for plenary | A5-0026/2004 | |
| 09/02/2004 | Debate in Parliament |  | |
| 11/02/2004 | Decision by Parliament | T5-0089/2004 | Summary |
| 11/02/2004 | End of procedure in Parliament | | |

| Technical information | |
|----------------------------|--------------------------------|
| Procedure reference | 2003/2165(INI) |
| Procedure type | INI - Own-initiative procedure |
| Procedure subtype | Initiative |
| Legal basis | Rules of Procedure EP 54 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | EMPL/5/20002 |

| Documentation gateway |
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|---|--|------------|----|---------|
| Document attached to the procedure | COM(2003)0843 | 30/12/2003 | EC | Summary |
| Committee report tabled for plenary, single reading | A5-0026/2004 | 22/01/2004 | EP | |
| Text adopted by Parliament, single reading | T5-0089/2004 OJ C 097 22.04.2004, p. 0138-0566 E | 11/02/2004 | EP | Summary |

Revision of Directive 93/104/EEC on the organisation of working time

PURPOSE : to present a report on the application of Directive 93/104/EC on the certain aspects of the organisation of working time and the possible re-exam of the Directive. **CONTENT** : Directive 93/104/EC of 23 November 1993 lays down minimum requirements with regard to the organisation of working time, with the aim of ensuring a better level of safety and health protection for workers. In order to ensure the protection of workers against harmful effects for their health and safety resulting from working excessive hours, insufficient rest or irregular organisation of work, the Directive lays down in particular: - a minimum rest period of 11 consecutive hours for each 24-hour period; - a rest break where the working day is longer than six hours; - a minimum rest period of one day per week; - maximum weekly working hours of 48 hours on average, including overtime; - four weeks of paid annual leave; - an average of no more than eight hours of work at night in any 24-hour period. The Member States were required to transpose the Directive by 23 November 1996 at the latest. Transposal has been concluded in all the Member States. Further information on the transposal of the Directive may be obtained by consulting the report published in 2000. The scope of Directive 93/104/EC excluded air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and doctors in training. On 22 June 2000, the European Parliament and the Council adopted Directive 2000/34/EC amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive. Directive 2000/34/EC was to be transposed by the Member States by 1 August 2003 (1 August 2004 with regard to doctors in training). The aim of this communication is to analyse the application of the Directive 93/104/EC as amended by Directive 2000/34/EC and more specifically two provisions which allow for their review prior to the expiry of a seven-year period reckoned from the deadline for transposal by the Member States, i.e. prior to 23 November 2003. These provisions concern the derogations from the reference period for the application of Article 6 (maximum working week) and the option of not applying Article 6 if the worker agrees to carry out such work (generally known, and hereinafter referred to as, opt-out). The aim of this communication is therefore threefold: 1) it aims to evaluate the application of the two provisions subject to review; 2) it aims to analyse the impact of the case law of the Court concerning the definition of working time and the qualification of time on call, as well as new developments aimed at improving compatibility between working and family life; 3) it aims to consult the European Parliament and the Council, but also the European Economic and Social Committee, the Committee of the Regions and the social partners, on a possible revision of the text. The report focuses on the directive's current opt-outs (the use of Article 18(1)(B)(I)), which allow individuals to waive their working time rights, and the definition and calculation of working time. Recent European Court of Justice rulings have led to more Member States turning to use of the opt-out. It has to be noted that the main characteristics of the system governing working time in the United Kingdom have remained unchanged despite the entry into force of the Directive, mainly as a result of using the opt-out. According to available figures, approximately 4 million people, or 16% of the workforce, currently work more than 48 hours per week, although there were only 3.3 million (or 15%) at the beginning of the 1990s. It also appears that the number of people working over 55 hours per week has increased, and now stands at 1.5 million. In fact, the United Kingdom is the only Member State where weekly working time has increased over the last decade. France, Germany, Netherlands, Spain and Luxembourg are preparing or have passed legislation to make restricted use of the opt-out, in certain sectors. The Commission's report finds that not all the guarantees laid down within the Directive are being provided. It is concerned, for example, that workers are frequently asked to sign the opt-out agreement at the same time as signing their employment contract, which acts a constraint to freedom of choice. The communication lays down the criteria which the Commission feels must be met: first and foremost, the approved approach should: - give workers a high level of health and safety protection in respect of working time; - give firms and Member States more flexibility in the way they manage working time; - make it easier to reconcile work and family life; - avoid imposing unreasonable constraints on firms, particularly small and mediumsized businesses. The Commission would like the addressees of this communication to express their opinion on the need to revise the current text or introduce other initiatives, not necessarily legislative. Five main issues emerge which need to be addressed: - the first refers to the reference periods; - the second relates to the Court of Justice's interpretation of the concept of working time in the SIMAP and JAEGER cases; - the third concerns the conditions of application of article 18.1 b) i) (opt out); - the fourth, covers measures aiming at improving the reconciliation between work and family life; - the fifth whether an interrelated approach to these issues would allow for a balanced solution capable of meeting the criteria set above. The deadline for responses to the consultation is 31 March 2004.?

Revision of Directive 93/104/EEC on the organisation of working time

The committee adopted the own-initiative report by Alejandro CERCAS (PES, E) on the revision of the 1993 directive laying down a maximum 48-hour working week. The report, adopted by only a narrow majority in the committee, sharply criticised abuses of the individual opt-out clause, especially in the United Kingdom, and called for opt-outs to be abolished as quickly as possible, by 1 January 2007 at the latest. MEPs also urged the Commission to institute an infringement procedure immediately against the UK government, arguing that it was guilty of "widespread and systematic abuse of the directive" and that the number of people working more than 55 hours a week in the UK had increased in the last decade. The report pointed out that a number of other countries were also starting to use opt-outs in some sectors (i.e. health workers in France, Germany, Spain and the Netherlands, and workers in the hotel and catering trades in Luxembourg), thereby undermining the purpose of the directive. With enlargement just round the corner, MEPs therefore wanted the Member States to make a serious effort to find alternatives and wait for a revised version of the directive. While they recognised the need for flexibility in the organisation of work, as currently allowed to employers under the directive, MEPs stressed that the health and safety of workers must not be subordinated to economic considerations. They also called for an EU-wide Member State comparison study on the familial and health repercussions of working long hours and the effect on both sexes. They added that women were more likely to suffer negative effects on their health and well-being if they had to take on the double burden of working life and family responsibilities. Moreover, the "long hours culture" in higher professions and managerial jobs was an obstacle to the upward mobility of women and sustained gender segregation at the workplace. Apart from the opt-out issue, the committee also turned its attention to the actual definition of working hours in the light of recent rulings by the EU Court of Justice that time spent on call by doctors must be regarded as working time. Given the urgency of this issue, MEPs regretted that the

lack of comparative studies and concrete data meant that the economic and social impact on the health sector could not be assessed. They therefore called on the Commission to provide the Member States with a clear framework with a view to introducing structural solutions, including possible adjustments to the directive, to resolve the issue of how to define and calculate hours spent on call at the workplace. Lastly, MEPs noted that the Commission's assessment report did not set out clear options for dealing with the problems identified and they recommended that an amended draft directive be drawn up as soon as possible.?

Revision of Directive 93/104/EEC on the organisation of working time

The European Parliament adopted a resolution drafted by Alejandro CERCAS (PES, Spain) on the organisation of working time. The report was adopted by 370 in favour to 116 against with 21 abstentions. On the particular point of the opt-out, the vote was close, with those in favour of removing the option for employees to waive their rights succeeding by 275 votes to 229 with 9 abstentions. However, Parliament voted by a large majority (311 versus 89 with 118 abstentions) against a call for the UK to be taken to the Court of Justice for failing to tackle alleged abuse of the directive. Parliament deplored the fact that the Commission has submitted the required assessment report after the seven-year deadline for review laid down in Directive 93/104/EC and that the report does not set out clear options for resolving the problems identified. The Commission should consider an amended directive as soon as possible. Parliament highlighted the specific importance of addressing the problems relating to availability and financing in the health sector arising from the Court of Justice's interpretation of the concept of working time in the SIMAP and Jaeger cases, but deplored the fact that the Commission did not manage to carry out, in the three years after the SIMAP ruling, an in-depth study on the consequences of these judgments for the Member States or to find transitional remedies. The Commission is asked to draw up a study as to what effects derogations on maximum working time (Article 6 of Directive 93/103/EC) have on the health and safety of workers. Any initiative in this field should be based on the premise that the health and safety of workers must take precedence but should be looked at alongside the reconciliation of family and professional life and any considerations of an economic nature. Parliament also stated that it looked to the Commission to refrain from taking any initiatives serving to 'renationalise' the European Working Time Directive. Turning to the individual opt-out, Parliament called for this to be revised, with a view to phasing-out, as soon as possible. In the meantime, the Commission must identify practical ways of tackling potential or actual abuses of the opt-out provision including seeking views on how best to strengthen the voluntary nature of the opt-out. Parliament went on to call on the Member States to await a revised version of the directive and not to make excessive use of the derogation provided for in Article 18. It should not be misused to cater for the apparent problems caused by the Court of Justice's interpretation of working time for on-call stand-by hours at the workplace in the health-care and other sectors. Member States need to look for alternative solutions within the scope of the directive. These solutions should provide for other flexibility options that do not completely do away with any limitation on working hours and continue to provide for adequate protection. The Commission and Member States are urged to promote an exchange of information about good practice within already existing models. Parliament asked the Commission to produce an additional communication containing a specific and reasoned statement of its attitude regarding all the provisions of the directive that may need to be revised, to examine solutions to re-establish in the framework of a revision of the directive clear obligations on employers properly to measure working time, and to submit its views to Parliament for consultation as soon as possible. ?