Organisation of working time

2004/0209(COD) - 17/12/2008 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution amending the common position of the Council for adopting a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time.

The recommendation for second reading had been tabled for consideration in plenary by Alejandro CERCAS (PES, ES), on behalf of the Committee on Employment and Social Affairs.

The main amendments to the common position, adopted in plenary, are as follows:

On-call time: according to the Council common position, the inactive part of on-call time shall not be regarded as working time unless national law or, in accordance with national law and/or practice, a collective agreement or an agreement between the social partners provides otherwise. According to the Parliament, the entire period of on-call time, including the inactive part, shall be regarded as working time. However, inactive parts of on-call time may, by collective agreement or other agreement between the two sides of industry or by means of law or regulation, be calculated in a specific manner in order to comply with the maximum weekly average working time laid down in Article 6, subject to compliance with the general principles relating to the protection of the safety and health of workers

Calculation of working time: in order to protect the health of workers, MEPs consider that the calculation of working time should be made per person and not per contract. Therefore, in the case of workers with more than one employment contract, and for the purposes of the implementation of this Directive, the worker's working time shall be the sum of the periods of time worked under each of the contracts.

Balancing work and family life: the Member States shall ensure, in consultation with the social partners, that:

- employers inform workers well in advance of any change in the pattern of working time; and
- workers have the right to request changes to their hours and patterns of work, and employers are required to consider such requests fairly, having regard to the flexibility needs of employers and employees. An employer may refuse such a request only if the organisational disadvantages for the employer are disproportionately greater than the benefit to the worker.

Derogations: derogations to the Directive should be limited to safeguarding its health and safety principles, which should apply regardless of the position of the persons concerned. MEPs also state that compensatory rest shall follow periods of time spent on duty, as indicated by the Court of Justice.

Limitations on derogations to the reference periods: according to the common position, the Member States have the option, while respecting the general principles of the protection of the health and safety of workers, to allow that, for objective or technical reasons or reasons relating to the organisation of work, the reference period should be extended to a period not exceeding twelve months. The Parliament specifies that this may only be agreed by legislative or regulatory provision, following consultation of the social partners at the appropriate level, in cases where workers are not covered by collective agreements or other agreements between social partners, provided that the Member State concerned takes the necessary measures to ensure that:

- the employer informs and consults with workers and/or their representatives about the introduction of the proposed working time pattern and alterations thereto;
- the employer takes the necessary measures to prevent and/or remedy any health and safety risks that may be related to the proposed working time pattern.

Maximum weekly working time: Article 6 of Directive 2003/88/EC provides that the maximum weekly working time shall not exceed 48 hours, including overtime. However, an opt-out clause permits a Member State to not apply the maximum weekly working time if the worker accepts to work longer. At present, 15 Member States employ this clause. In an amendment adopted by 421 votes to 273, with 11 abstentions, the Parliament proposes the abolition of this clause, 36 months after the entry into force of the revised directive.

In any event, Member States wishing to use this option should take the necessary measures to ensure that:

- no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference, unless he has first obtained the worker's agreement to perform such work. This agreement shall be valid for a period not exceeding six months and shall be renewable;
- an agreement given at the time of the signature of the individual employment contract or during any probationary period is null and void.

Opt-out and the working week: according to the common position, the limit for workers who have opted out would be 60 hours (an average calculated over a three-month period) unless otherwise provided for in a collective agreement or an agreement between the social partners, or 65 hours (calculated as an average over a period of three months) in the absence of a collective agreement and when the inactive part of on-call time is regarded as working time. Members consider that a 60-65 hour working week is too long and, for this reason, deleted this provision.