Organisation of working time

2004/0209(COD) - 05/02/2009 - Commission opinion on Parliament's position at 2nd reading

The Commission can accept, in full or in part, 15 of the 22 amendments adopted by the European Parliament at second reading.

Overall, the position of the Parliament and the Common Position of the Council differ on several significant issues. However, the Commission remains convinced of the urgent importance of adopting the amending proposal before the end of the present legislative mandate. It believes that a sustainable basis for agreement will need to provide a carefully balanced solution, which strengthens overall protection for workers' health and safety, while at the same time allowing greater flexibility for both workers and employers in the practical organisation of working time.

In this context, this opinion describes the Commission?s position towards the amendments voted by the Parliament, and sets out concrete proposals with the aim of helping the Council and the Parliament to reach such a basis for agreement.

On-call time (inactive parts of on-call time): the Commission is able to support the Parliament?s amendment, but is prepared to explore a possible overall compromise on the issues covered by this amendment, which at present are dividing the co-legislators. The Commission accepts the third part of the amendment, which states that the inactive part of on-call time shall not be counted towards minimum rest periods required by the Directive. It can also accept in substance the first, second and fourth parts of the amendment, so that periods of inactive on-call time would be regarded as working time, but could be counted in a specific way when calculating working time.

In particular, the Commission considers that the second part of the amendment could, in principle, make a valuable contribution to an overall solution regarding on-call time which would be acceptable both to Parliament and to Council, subject to some reformulation of the text so that the experience in the sector concerned, and compliance with the general principles of protecting workers? health and safety, are both included as relevant criteria.

Compensatory rest (timing of compensatory rest): under the Parliament?s amendment, compensatory rest would be taken 'following' time on duty, rather than 'within a reasonable period' afterwards, as under the Common Position or under the Commission's amended proposal. The Commission can accept in principle the proposed change regarding the timing of compensatory rest, but believes that reformulation is needed, in order to provide some additional flexibility.

In order to reach a compromise on this issue, a possible approach is that equivalent compensatory rest would, as a general rule, be taken following the period of duty concerned. However in specified sectors or activities, and for duly justified reasons, national laws or collective agreements could provide for equivalent compensatory rest to be taken within a ?reasonable period?, which must be clearly defined, by taking account of the objective of protecting workers' health and safety, and of relevant experience in the sectors or activities concerned.

Reference period: this provision allows Member States to extend the reference period (for calculating limits to average weekly working time) to a maximum of 12 months by legislation. The Commission can accept the Parliament?s amendment, the effect of which is: (i) to limit the use of this option to workers who are not covered by collective agreements or agreements between the social partners; (ii) and to provide that in such cases the Member State must ensure that employers inform and consult workers about introducing such a work pattern, and that they take the necessary measures to deal with any resulting health and safety risks.

The Commission can also accept the amendment deleting the obligation to choose between the opt-out and extension of the reference period. This amendment would delete Article 22a of the common position, which was meant to provide an incentive for Member States not to use the opt-out, or to discontinue their use of the opt-out.

Reconciliation of work and family life: the Commission can partly accept this amendment. It can accept that employers should inform workers 'well in advance' rather than 'in due time' about changes to work patterns, but considers that the change proposed by the Common Position (to inform only of 'substantial' changes) is a reasonable one, and should not be deleted.

However, the Commission does not accept the second and third parts of the amendment which would create a right for workers to request changes to their work patterns in order to facilitate reconciling work and family life and states that employers could refuse such requests only in limited circumstances.

Opt-out:

- the opt-out: the Commission cannot accept this amendment, which would have the effect of terminating the possibility for Member States to allow use of the opt-out, three years after the amending proposal enters into force. While being in principle supportive of the eventual phasing out of the opt-out, the Commission does not consider that present conditions allow for the phasing-out of the opt-out. The Commission considers, in view of an overall compromise, that all provisions pertaining to the opt-out have to be assessed together with the review clause;
- period for validity of individual opt-out: the Commission cannot accept this amendment, which provides that where a worker agrees to opt out of the 48-hour limit to average weekly working time, that agreement shall be valid for a period not exceeding six months (rather than one year, under the common position);
- no opt-out during probationary period: the Commission accepts this amendment, the effect of which is that a worker could not validly agree to opt-out during any probationary period;
- deletes limits to working time of opted-out workers: the Commission accepts the amendment, which would delete the upper limits proposed by the common position (60 hours per week, or 65 hours in some situations, on average) for the working time of workers who agree to opt-out;
- exclusion of certain short-term workers: the Commission can partly accept this amendment. If the opt-out is to remain, then short-term workers should be able to use it;
- deletion of review clause: this amendment is closely related to the outcome of the amendment on the future of the opt-out. The Commission can accept this amendment in principle. However, in the event that the opt-out remains, the Commission believes that a

review clause is indispensable.