

Organisation of working time

2004/0209(COD) - 22/09/2004 - Legislative proposal

PURPOSE : to make some amendments to the Working Time directive (Directive 2003/88/EC).

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : this review of some of the provisions of Directive 2003/88/EC, with a view to a possible modification, is imposed by the Directive itself. The latter contains two provisions prescribing review of:

- the derogations to the reference period for the application of Article 6 (maximum weekly working time);
- the possibility of not applying Article 6 if the worker gives his agreement to carry out such work (the "opt-out").

In addition, the Commission analyses the effects of certain case law, in particular of the rulings in the SIMAP and Jaeger cases, which held that on-call duty performed by a doctor when he is required to be physically present in the hospital must be regarded as working time.

The Commission has consulted the social partners, who remain divided on the issues of the opt-out and the derogations to the reference period.

The principal points of the amended proposal are as follows:

- as regards in particular the individual opt-out from the 48-hour average weekly limit, the proposal introduces a dual system. The individual opt-out will require prior collective agreement or agreement among social partners, but only in those cases where such agreements are possible under national legislation and/or practice. In other cases, opt-out on the basis of individual consent alone will remain possible, but reinforced conditions will apply to prevent abuses and to ensure that the choice of the worker is entirely free. Furthermore, the Directive introduces a maximum duration of working time for any one week, unless otherwise provided by collective agreement.
- the opt-out is maintained for companies with no collective agreement in force and no collective representation of the workers that is capable of concluding a collective agreement or an agreement between the two sides of industry on the issue (essentially micro and small enterprises). Moreover, the possibility of fixing a one-year reference period will simplify the management of employees' working time, while allowing a better adaptation to fluctuations in demand.
- the proposal establishes that the inactive part of on-call time is not working time within the meaning of the Directive, unless national legislation, collective agreements or agreements between the social partners decide otherwise;
- the definitions of "working time" and of "rest period" remain unchanged. This proposal inserts two new definitions: "on-call time" and "inactive part of on-call time", which are added to the existing definitions. These two new definitions aim to introduce a concept into the Directive which is not strictly speaking a third category of time, but a mixed category incorporating, in different proportions, the two concepts of "working time" and of "rest period". The proposed notion of "on call time" covers situations in which the worker must stay at the workplace;
- the proposal defines the arrangement applicable to on-call time and more specifically to the inactive part of on-call time. The inactive part of on-call time is not considered "working time", unless otherwise stipulated by national law or, in conformity with national law and/or practice, by collective agreement or agreement between the two sides of industry. As regards the periods during which the worker carries out his activities or duties, they must be regarded entirely as working time within the meaning of the Directive;
- with regard to reference periods, the standard reference period would remain 4 months. However, Member States could extend this period up to one year, subject to the consultation of concerned social partners and to the encouragement of social dialogue in this matter. It is also specified that the duration of the reference period can under no circumstances be higher than the duration of the employment contract;
- the proposal removes the possibility of derogating from the four-month reference period. Since national law can establish a reference period of up to one year, it is no longer necessary to allow for this derogation of up to six months;
- the proposal establishes periods of daily and weekly rest of, respectively, 11 consecutive hours per period of 24 hours and of 24 hours plus the 11 hours of daily rest for each seven-day period. It is, however, possible to derogate from these two provisions. In such cases, workers must, in principle, be granted an equivalent period of compensatory rest. This modification aims to clarify that the periods of compensatory rest have to be granted within a reasonable time and, in all the cases, within a time limit not exceeding 72 hours for daily rest;
- it establishes the conditions to be met by Member States who make use of the possibility not to apply Article 6 (maximum weekly working time). If Article 6 is not to apply, this must be authorized by a collective agreement or an agreement between the social partners at the appropriate level. It must be emphasised that this condition is not applicable when a collective agreement is not in force and there is no collective representation of the workers within the undertaking or the business that is empowered, in accordance with national law and/or practice, to conclude a collective agreement or an agreement between the two sides of industry on the issue. In such cases, the individual worker's consent, in accordance with the established conditions, is sufficient.

The authorisation by collective agreement or agreement between the two sides of industry is necessary, but not enough. In any case, a worker's individual consent is necessary.

Concerning individual consent, the conditions are as follows: the worker's agreement has to be given in writing, it cannot be given at the beginning of the employment relationship or during any probation period, its validity is limited, an absolute maximum limit of weekly working hours is fixed and the obligation of keeping registers is imposed.