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Committee on Employment and Social Affairs

2004/0209(COD)

3.10.2008

*****II**

DRAFT RECOMMENDATION FOR SECOND READING

on the Council common position 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 (10597/2/2008 – C6-0324/2008 – 2004/0209(COD))

Committee on Employment and Social Affairs

Rapporteur: Alejandro Cercas

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position 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
(10597/2/2008 – C6-0324/2008 – 2004/0209(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (10597/2/2008 – C6-0324/2008),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2004)0607),
 - having regard to the amended Commission proposal (COM(2005)0246),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A6-0000/2008),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Council common position – amending act
Recital 7 a (new)

Council common position

Amendment

(7a) According to the case-law of the Court of Justice of the European Communities, the characteristic features of the concept of 'working time' are the requirements to be present at a place determined by the employer and available to the employer in order to be able to provide services immediately, when necessary.

¹ OJ C 92 E, 20.4.2006, p. 292.

(See P6_TA(2005)0175 of 11.5.2005, Recital 8.)

Amendment 2

Council common position – amending act Recital 8

Council common position

(8) *Workers should be afforded periods of compensatory rest in circumstances where rest periods are not granted. The determination of the length of the reasonable period within which equivalent compensatory rest is granted to workers should be left to the Member States, taking into account the need to ensure the safety and health of the workers concerned and the principle of proportionality.*

Amendment

(8) *In circumstances where workers have not been afforded periods of rest, compensating rest periods must be granted following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the two sides of industry.*

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraphs 6 and 7.)

Amendment 3

Council common position – amending act Recital 11

Council common position

(11) The experience gained in the application of Article 22(1) of Directive 2003/88/EC shows that the purely individual decision not to be bound by Article 6 thereof **can be** problematic with regard to the protection of workers' health and safety and the freedom of choice of the worker.

Amendment

(11) The experience gained in the application of Article 22(1) of Directive 2003/88/EC shows that the purely individual **final** decision not to be bound by Article 6 thereof **is** problematic with regard to the protection of workers' health and safety and the freedom of choice of the worker. **Therefore, the opt-out in that provision should cease to apply.**

(See P6_TA(2005)0175 of 11.5.2005, Recital 10.)

Amendment 4

Council common position – amending act Recital 12

Council common position

Amendment

(12) The option provided for in Article 22(1) is a derogation from the principle of a 48-hour maximum working week, calculated as an average over a reference period. It is subject to the effective protection of workers' health and safety, and to the express, free and informed consent of the worker concerned. Its use must be subject to appropriate safeguards to ensure that these conditions are complied with, and to close monitoring.

deleted

Or. es

Amendment 5

Council common position – amending act Recital 13

Council common position

Amendment

(13) Before applying the option provided in Article 22(1), consideration should be given to whether the longest reference period or other flexibility provisions provided by Directive 2003/88/EC do not guarantee the flexibility needed.

deleted

Or. es

Amendment 6

Council common position – amending act Recital 14

Council common position

(14) In order to avoid risks to the health and safety of workers, the cumulative use in a Member State of both the flexible reference period provided by point (b) of the first paragraph of Article 19 and the option under Article 22(1) is not possible.

Amendment

deleted

Or. es

Amendment 7

Council common position – amending act Article 1 – point 2 Directive 2003/88/EC Article 2a

Council common position

On-call time

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.

The inactive part of on-call time may be calculated on the basis of an average number of hours or a proportion of on-call time, taking account of experience in the sector concerned, by collective agreement or agreement between the social partners or by national legislation following consultation of the social partners.

The inactive part of on-call time shall not be taken into account in calculating the daily or weekly rest periods laid down in

Amendment

On-call time

The entire period of on-call time, including the inactive part, shall be regarded as working time.

However, by collective agreements or other agreements between the two sides of industry or by means of laws or regulations, inactive parts of on-call time may 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.

Articles 3 and 5 respectively, unless otherwise provided for:

(a) in a collective agreement or an agreement between the social partners;

or

(b) by means of national legislation following consultation of the social partners.

The period during which the worker actually carries out his activity or duties during on-call time shall always be regarded as working time.

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 2.)

Justification

As co-legislators, the Council and Parliament must abide by the Court of Justice case and respect the dignity of the work of persons who are on call.

Amendment 8

Council common position – amending act

Article 1 – point 2

Directive 2003/88/EC

Article 2b

Council common position

The Member States shall encourage the social partners at the appropriate level, without prejudice to their autonomy, to conclude agreements aimed at improving the reconciliation of work and family life.

The Member States shall ensure, without prejudice to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and in consultation with the social partners, that ***employers inform workers in due time***

Amendment

The Member States shall encourage the social partners at the appropriate level, without prejudice to their autonomy, to conclude agreements aimed at improving the reconciliation of work and family life.

The Member States shall ensure, without prejudice to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and in consultation with the social partners, that:

of any substantial changes in the pattern or organisation of their working time.

Taking into account workers' needs for flexibility in their working hours and patterns, the Member States shall, in accordance with national practices, also encourage employers to examine requests for changes to such working hours and patterns, subject to business needs, and to both employers' and workers' needs for flexibility.

- 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 have the obligation 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 disproportionate to the benefit to the worker.

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 4.)

Justification

To ensure that the reference to reconciling work and family life is not empty rhetoric.

Amendment 9

Council common position – amending act

Article 1 – point 3

Directive 2003/88/EC

Article 17 – point b

Council common position

(b) in paragraph 2, the words "provided that the workers concerned are afforded equivalent periods of compensatory rest" shall be replaced by "provided that the workers concerned are afforded equivalent periods of compensatory rest *within a reasonable period, to be determined by*

Amendment

(b) in paragraph 2, the words "provided that the workers concerned are afforded equivalent periods of compensatory rest" shall be replaced by "provided that the workers concerned are afforded equivalent periods of compensatory rest *following periods of time spent on duty, in*

national legislation or a collective agreement or an agreement concluded between the social partners";

accordance with the relevant law, collective agreement or other agreement between the two sides of industry";

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 6.)

Justification

Common sense and worker health and safety require compensatory rest to follow periods of time spent on duty, as indicated by the Court of Justice.

Amendment 10

Council common position – amending act

Article 1 – point 4

Directive 2003/88/EC

Article 18

Council common position

Amendment

In Article 18, in the third paragraph, the words "on condition that equivalent compensating rest periods are granted to the workers concerned" shall be replaced by "on condition that equivalent compensating rest periods are granted to the workers concerned ***within a reasonable period, to be determined by national legislation or a collective agreement or an agreement concluded between the social partners***".

In Article 18, in the third paragraph, the words "on condition that equivalent compensating rest periods are granted to the workers concerned" shall be replaced by "on condition that equivalent compensating rest periods are granted to the workers concerned ***following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the two sides of industry***".

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 7.)

Justification

Common sense and worker health and safety require compensatory rest to follow periods of time spent on duty, as indicated by the Court of Justice.

Amendment 11

Council common position – amending act

Article 1 – point 5

Directive 2003/88/EC

Article 19 – point (b)

Council common position

(b) by legislative or regulatory provision following consultation of the social partners at the appropriate level.

Amendment

(b) 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 the two sides of industry, 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.

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 8.)

Justification

To strike a balance between employers' and workers' flexibility and safety needs.

Amendment 12

Council common position – amending act

Article 1 – point 6

Directive 2003/88/EC

Article 22 – paragraph 1

Council common position

1. Although the general principle is that the maximum weekly working time in the

Amendment

1. Although the general principle is that the maximum weekly working time in the

European Union is 48 hours and that in practice it is an exception for workers in the Union to work longer, Member States may decide not to apply Article 6 provided that they take the necessary measures to ensure the effective protection of the safety and health of workers. Implementation of this option, however, shall be expressly laid down by a collective agreement or an agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.

European Union is 48 hours and that in practice it is an exception for workers in the Union to work longer, Member States may decide not to apply Article 6 **during a transitional period to end 36 months after the entry into force of Directive 2005/.../...** provided that they take the necessary measures to ensure the effective protection of the safety and health of workers. Implementation of this option, however, shall be expressly laid down by a collective agreement or an agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 10, point (c).)

Justification

To do away with a provision that undermines worker health and safety protection and the inalienability of fundamental rights and to maintain the force of ILO agreements and the social legislation and agreements between the two sides of industry in the Member States.

Amendment 13

Council common position – amending act

Article 1 – point 6

Directive 2003/88/EC

Article 22 – paragraph 2 - point a

Council common position

(a) no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article 16(b), unless he has first obtained the worker's agreement to perform such work. This agreement shall be valid for a period not exceeding **one year** and shall be renewable;

Amendment

(a) no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article 16(b), 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;

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 10, point (b))

Justification

To give workers a greater say during the transitional period.

Amendment 14

Council common position – amending act

Article 1 – point 6

Directive 2003/88/EC

Article 22 – paragraph 2 – point c – point i

Council common position

(i) the time of the signature of the individual employment contract; or

Amendment

(i) the time of the signature of the individual employment contract **or during any probationary period**; or

Or. es

(See P6_TA(2005)0175 of 11.5.2005, Article 1, paragraph 10, point (b).)

Justification

To give workers a greater say during the transitional period.

Amendment 15

Council common position – amending act

Article 1 – point 6

Directive 2003/88/EC

Article 22 – paragraph 2 – point d

Council common position

(d) no worker who has given an agreement under this Article shall, over a period of seven days, work more than:

(i) 60 hours, calculated as an average over a period of three months, unless otherwise provided for in a collective agreement or an agreement between the social partners; or

(ii) 65 hours, calculated as an average

Amendment

deleted

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 in accordance with Article 2a;

Or. es

Justification

A 60- or 65-hour working week is too long. What is more, given that this is an average over a three-month period, 79-hour weeks could be possible.

Amendment 16

Council common position – amending act

Article 1 – point 6

Directive 2003/88/EC

Article 22 – paragraph 3

Council common position

Amendment

3. Subject to compliance with the general principles relating to the protection of the safety and health of workers, where a worker is employed by the same employer for a period or periods that do not exceed ten weeks in total over a period of twelve months, the provisions of paragraph 2(c)(ii) and (d) shall not apply." ***deleted***

Or. es

Justification

To ensure due protection for the millions of European workers who are on temporary contacts and to whom the Council's wording affords no protection whatsoever.

Amendment 17

Council common position – amending act

Article 1 – point 7

Directive 2003/88/EC

Article 22a

Council common position

Amendment

Special provisions

deleted

When a Member State makes use of the option provided for by Article 22:

(a) the option set out under point (b) of the first paragraph of Article 19 shall not apply;

(b) that Member State may, by way of derogation from Article 16(b) and for objective or technical reasons or reasons concerning the organisation of work, allow, by means of laws, regulations or administrative provisions, the reference period to be set at a period not exceeding six months.

Such a reference period shall be subject to compliance with the general principles relating to the protection of the health and safety of workers, and shall not affect the three-month reference period applicable under Article 22(2)(d) to workers who have entered into a valid subsisting agreement under Article 22(2)(a)."

Or. es

Justification

This provision is totally meaningless because the reference period is irrelevant to anyone taking up the opt-out, since there is no limit on the working week.

Amendment 18

Council common position – amending act

Article 1 – point 9

Directive 2003/88/EC

Article 24a

Council common position

Amendment

Evaluation report

deleted

1. By ...*:

(a) Member States which make use of the option under Article 22(1) shall inform the Commission of the reasons, the sector(s), activities and numbers of workers concerned, after consulting the social partners at national level. The report by each Member State shall give information on its effects on workers' health and safety as well as indicating the viewpoints of the social partners at appropriate level, and shall also be submitted to the social partners at national level;

(b) Member States which make use of the option under point (b) of the first paragraph of Article 19 shall inform the Commission of the manner in which they have implemented this provision, and of its effects on workers' health and safety.

2. By ..., the Commission shall, after consulting the social partners at Community level, submit to the European Parliament, the Council and the European Economic and Social Committee a report on:*

(a) the use of the option under Article 22(1) and the reasons for that use, and

(b) other factors which may contribute to long working hours, such as the use of point (b) of the first paragraph of Article 19.

The report may be accompanied by appropriate proposals to reduce excessive working hours, including the use of the option under Article 22(1), taking into account its impact on the health and safety of the workers covered by this option.

3. The Council shall, on the basis of the report referred to in paragraph 2, evaluate the use of the options provided by this Directive and namely those laid down in point (b) of the first paragraph of Article 19 and Article 22(1).

Taking into account this evaluation, the Commission may, by ... **, if appropriate, submit a proposal to the European Parliament and the Council to amend this Directive, including the option laid down in Article 22(1)."

Or. es

Justification

There is no point in submitting an evaluation report once the opt-out has ended.