PARLAMENT EWROPEW

2004 *2009*

Dokument ta' sessjoni

FINALI
A6-0105/2005

25.4.2005

***I
RAPPORT

dwar il-proposta għal direttiva tal-Parlament Ewropew u tal-Kunsill li temenda d-Direttiva 2003/88/KE dwar ċerti aspetti ta' l-organizzazzjoni tal-ħin tax-xogħol
(COM(2004)0607 – C6-0122/2004 – 2004/0209(COD))

Kumitat għall-Impjiegi u l-Affarijiet Soċjali

Rapporteur: Alejandro Cercas

Tifsira tas-simboli użati

*	Proċedura ta' konsultazzjoni *maġġoranza tal-voti mitfugħa*
**I	Proċedura ta' kooperazzjoni (l-ewwel qari) *maġġoranza tal-voti mitfugħa*
**II	Proċedura ta' kooperazzjoni (it-tieni qari) *maġġoranza tal-voti mitfugħa, sabiex tiġi approvata l-pożizzjoni komuni maġġoranza tal-Membri komponenti tal-Parlament, sabiex tiġi rriffutata jew emendata l-pożizzjoni komuni*
***	Proċedura ta' kunsens *maġġoranza tal-Membri kollha tal-Parlament, minbarra fil-każi msemmija fl-Artikoli 105, 107, 161 u 300 tat-Trattat KE u fl-Artikolu 7 tat-Trattat UE*
***I	Proċedura ta' kodeċiżjoni (l-ewwel qari) *maġġoranza tal-voti mitfugħa*
***II	Proċedura ta' kodeċiżjoni (it-tieni qari) *maġġoranza tal-voti mitfugħa, sabiex tiġi approvata l-pożizzjoni komunimaġġoranza tal-Membri kollha tal-Parlament, sabiex tiġi rriffutata jew emendata l-pożizzjoni komuni*
***III	Proċedura ta' kodeċiżjoni (it-tielet qari) *maġġoranza tal-voti mitfugħa, sabiex jiġi approvat it-test konġunt*

(Dan it-tip ta' proċedura jiddependi mill-bażi legali proposta mill-Kummissjoni)

Emendi għal test leġiżlattiv

Fl-emendi li jsiru mill-Parlament, it-test emendat huwa indikat b'tipa ***qawwija korsiva.*** Test *korsiv normali* huwa indikazzjoni għas-servizzi tekniċi li turi partijiet tat-test leġiżlattiv li għalihom qed tkun proposta korrezzjoni bl-iskop li tgħin fil-preparazzjoni tat-test finali (pereżempju, żbalji ovvji jew nuqqasijiet f'verżjoni lingwistika minnhom). Il-korrezzjonijiet proposti huma suġġetti għall-qbil tas-servizzi tekniċi involuti.

WERREJ

Paġna

ABBOZZ TA' RIŻOLUZZJONI LEĠIŻLATTIVA TAL-PARLAMENT EWROPEW

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time (COM(2004)0607 – C6-0122/2004 – 2004/0209(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0607)[1],

– having regard to Article 251(2) and Article 137(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0122/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Industry, Research and Energy and the Committee on Women's Rights and Gender Equality (A6-0105/2005),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament

Emenda 1
Kwotazzjoni 2 A (ġdida)

	Wara li ġew ikkunsidrati l-konklużjonijiet tal-Kunsill ta' Liżbona.

Justification

The important Lisbon conclusions were reached after the original Directive was drawn up, and so should be taken into account in this Review.

Emenda 2
PREMESSA 4

[1] Not yet published in OJ.

Aktar minn għaxar snin wara l-*adottament* tad-Direttiva 93/104/KE tal-Kunsill , id-Direttiva inizjali fil-qasam ta' l-arranġament tal-ħin tax-xogħol, hu konfermat neċessarju li tkun immodernizzata l-*leġislazzjoni* komunitarja, bil-għan li ***tirrispondi*** aħjar ***għar****-realitajiet* u d-domandi, kemm ta' *minn* iħaddem kif ukoll tal-ħaddiema.	Aktar minn għaxar snin wara l-*adozzjoni* tad-Direttiva 93/104/KE tal-Kunsill , id-Direttiva inizjali fil-qasam ta' l-arranġament tal-ħin tax-xogħol, hu konfermat neċessarju li tkun immodernizzata l-*leġiżlazzjoni* komunitarja, bil-għan li ***tqis*** aħjar ***ir****-realtajiet* u d-domandi, kemm ta' *min* iħaddem kif ukoll tal-ħaddiema, ***dwar il-ħtieġa li jintlaħqu l-objettivi ta' Liżbona u l-ġurisprudenza tal-Qorti tal-Ġustizzja tal-Komunitajiet Ewropej.***

Emenda 2
PREMESSA 5

Il-konċiljazzjoni bejn ix-xogħol u l-ħajja familjari hi element essenzjali sabiex *ikunu milħuqa* l-objettivi li l-Unjoni ffissat għaliha nfisha fl-Istrateġija ta' *Lisbona*. Hi tali mod li toħloq mhux biss ambjent ta' xogħol aktar sodisfaċenti, iżda wkoll tippermetti adattament għall-bżonnijiet tal-ħaddiema, notevolment ta' dawk li għandhom *responsabbiltajiet* familjari. Bosta emendi introdotti fid-Direttiva 2003/88/KE, notevolment f'dak li jikkonċerna l-Artikolu 22, jippermettu kompatibilità aħjar bejn ix-xogħol u l-ħajja familjari.	Il-konċiljazzjoni bejn ix-xogħol u l-ħajja familjari hi element essenzjali sabiex *jintlaħqu* l-objettivi li l-Unjoni ffissat għaliha nfisha fl-Istrateġija ta' *Liżbona*. Hi tali mod li toħloq mhux biss ambjent ta' xogħol aktar sodisfaċenti, iżda wkoll tippermetti adattament għall-bżonnijiet tal-ħaddiema, notevolment ta' dawk li għandhom *responsabiltajiet* familjari. Bosta emendi introdotti fid-Direttiva 2003/88/KE, notevolment f'dak li jikkonċerna l-Artikolu 22, ***ifittxu li*** jippermettu kompatibilità aħjar bejn ix-xogħol u l-ħajja familjari.

Emenda 4
Premessa 7

(7) Huwa neċessarju li ***jintlaħaq bilanċ ġdid bejn*** il-protezzjoni tas-saħħa u tas-sikurezza tal-ħaddiema ***u l-ħtieġa li tingħata iżjed flessibilità lill-kumpaniji fl-***organizzazzjoni tal-ħin tax-xogħol, ***b'mod partikulari rigward il-ħin li fih ikunu 'on-call' u iżjed u iżjed matul il-partijiet inattivi tal-ħin li fih ikunu 'on-call'.***	(7) Huwa neċessarju li ***tissaħħaħ*** il-protezzjoni tas-saħħa u tas-sikurezza tal-ħaddiema ***għalkemm hemm l-isfida ta' forom ġodda ta'*** organizzazzjoni tal-ħin tax-xogħol, ***biex jiġu introdotti mudelli ta' ħin tax-xogħol li jipprovdu opportunitajiet għal tagħlim tul il-ħajja għall-ħaddiema, kif ukoll biex jintlaħaq bilanċ ġdid bejn ir-rikonċiljazzjoni bejn il-ħajja professjonali u l-ħajja familjari fuq naħa, u iżjed flessibilità*** fl-organizzazzjoni tal-ħin tax-xogħol ***fuq in-naħa l-oħra.***

Emenda 5

Premessa 7 A (ġdida)

(7a) Skond il-ġurisprudenza tal-Qorti tal-Ġustizzja Ewropea, il-karatteristiċi tipiċi tal-kunċett ta' 'ħin tax-xogħol' huma r-rekwiżiti li jridu jkunu preżenti fil-post magħżul minn min iħaddem u jridu jkunu disponibbli għal min iħaddem sabiex fejn hemm bżonn, ikun jista' jipprovdi s-servizzi immedjatament.

Justification

The Court rightly argues that a worker who is required to keep himself available to the employer at the place determined by the latter for the whole duration of periods of on-call duty, is subject to appreciably greater constraints than a worker on stand-by since the worker has to remain apart from the family and social environment and has less freedom to manage the time during which the professional services are not required. Therefore, workers under those conditions cannot be regarded as being at rest during the periods of on-call duty when they are not actually carrying on any professional activity.

Emenda 6
PREMESSA 8

(8) Id-dispożizzjonijiet għad-derogi li jikkonċernaw il-perijodu ta' referenza għandhom ukoll ikunu riveduti, bl-għan li jissimplifikaw *is-sistema* eżistenti *u biex* ikunu adattati aħjar għall-bżonnijiet ta' l-intrapriżi u tal-ħaddiema.	(8) Id-dispożizzjonijiet għad-derogi li jikkonċernaw il-perijodu ta' referenza għandhom ukoll ikunu riveduti, bl-għan li ***joħolqu possibilitajiet għal mudelli ġodda ta' ħin tax-xogħol, li jinkludu arranġamenti għal tagħlim tul il-ħajja u*** li jissimplifikaw *l-arranġamenti* eżistenti *sabiex* ikunu adattati aħjar għall-bżonnijiet ta' l-intrapriżi***, b'mod partikulari dawk l-intrapriżi żgħar u ta' daqs medju u b'mod partikulari rigward iktar flessibilità*** u għall-bżonnijiet tal-ħaddiema.

Emenda 7
PREMESSA 9

(9) L-esperjenza akkwistata fl-applikazzjoni ta' l-Artikolu 22, paragrafu 1, turi li d-deċiżjoni finali purament individwali li mhix obbligata bl-Artikolu 6 tad-direttiva tista' toħloq *problemi* ta' żewġ tipi: il-protezzjoni tas-saħħa u tas-sikurezza tal-ħaddiema kif ukoll l-għażla libera tal-ħaddiem.	(9) L-esperjenza akkwistata fl-applikazzjoni ta' l-Artikolu 22, paragrafu 1, turi li d-deċiżjoni finali purament individwali li mhix obbligata bl-Artikolu 6 tad-direttiva ***hija*** *problematika* ***u wasslet għal abbużi*** ta' żewġ tipi: il-protezzjoni tas-saħħa u tas-sikurezza tal-ħaddiema kif ukoll l-għażla libera tal-

	ħaddiem. ***Għalhekk, l-għażla li wieħed joħroġ minnha m'għandhiex tieqaf tapplika f'dik id-dispożizzjoni.***

Justification

The opt-out provision should be abolished as soon as possible since it is in flagrant contradiction to the objectives and provisions of the Directive and with the fundamental principles of the protection of health and safety. In addition, it is against the principles of the Treaty and contradicts all the evidence that indicates that working time without limits poses a serious risk to workers' health and safety, as well as to the reconciliation of family and professional life.

Emenda 8
Premessa 14

(14) Din id-direttiva tirrispetta d-drittijiet fundamentali u tikkonforma mal-prinċipji speċifikament imħaddna b'mod partikulari fiċ-'Charter' tad-Drittijiet Fundamentali ta' l-Unjoni Ewropea, B'mod partikulari, din id-direttiva għandha l-għan li *tassigura* r-rispett kollu għad-dritt ta' *kondizzjonijiet* ta' xogħol ġusti u onesti (Artikolu 31 tal-Karta tad-*drittijiet fondamentali* ta' l-Unjoni Ewropea).	(14) Din id-direttiva tirrispetta d-drittijiet fundamentali u tikkonforma mal-prinċipji speċifikament imħaddna b'mod partikulari fiċ-'Charter' tad-Drittijiet Fundamentali ta' l-Unjoni Ewropea, B'mod partikulari, din id-direttiva għandha l-għan li *tiżgura* r-rispett kollu għad-dritt ta' *kundizzjonijiet* ta' xogħol ġusti u onesti (Artikolu 31 tal-Karta tad-*Drittijiet Fundamentali* ta' l-Unjoni Ewropea, ***b'mod partikulari paragrafu 2 tiegħu, li jgħid li kull ħaddiem għandu d-dritt għal limitu ta' numru massimu ta' sigħat ta' xogħol, għal perijodi ta' mistrieħ ta' kuljum u ta' kull ġimgħa u għal perijodu annwali ta' 'leave' imħallas*) ***u d-dritt li jiġu rikonċiljati l-ħajja familjari u dik professjonali (Artikolu 33 ta' dak iċ-'Charter')***.

Emenda 9
ARTIKOLU 1, PUNT 1
Artikolu 2, punti 1 a u 1 b (Direttiva 2003/88/KE)

1a. "il-ħin li fih ħaddiem ikun 'on-call'": perijodu li fih il-ħaddiem għandu l-obbligu li jkun disponibbli fuq ***il-***post tax-xogħol ***sabiex, għat-talba ta' min iħaddmu, huwa jkun jista' jwettaq l-attività jew id-doveri***	1a. "il-ħin li fih ħaddiem ikun 'on-call'": perijodu li fih il-ħaddiem ***ma jistax jagħmel li jrid b'ħinu u*** għandu l-obbligu li jkun disponibbli fuq il-post tax-xogħol ***tiegħu jew fuq post tax-xogħol ieħor magħżul minn min iħaddmu sabiex jagħmel ix-xogħol tas-***

tiegħu.	***soltu u/jew ċertu attivitajiet u ħidmiet marbuta max-xogħol, bi qbil mal-liġijiet nazzjonali u/jew il-prattika fl-Istati Membri kkonċernati.***
1b. "parti inattiva fil-ħin li fih ħaddiem ikun 'on-call'": perijodu li fih il-ħaddiem ikun 'on-call' skond it-tifsira ta' l-Artikolu 1a, imma ***ma jkunx meħtieġ minn min iħaddmu li jaħdem fuq l-attivitajiet jew id-doveri tiegħu.***	1b. "parti inattiva fil-ħin li fih ħaddiem ikun 'on-call'": perijodu li fih il-ħaddiem ikun 'on-call' skond it-tifsira ta' l-Artikolu 1a, imma ***ma jkunx qed jagħmel ix-xogħol tiegħu tas-soltu jew kwalunkwe attività jew dover assoċjat ma' li wieħed ikun fuq xogħol, bi qbil mal-liġijiet nazzjonali u/jew mal-prattika ta' l-Istat Membru kkonċernat.***

Emenda 10
ARTIKOLU 1, PUNT 2
Artikolu 2a (Direttiva 2003/88/KE)

Il-parti inattiva fil-ħin li wieħed ikun 'on-call' m'għandhiex titqies bħala ħin ta' xogħol, sakemm il-liġi nazzjonali jew, bi qbil mal-liġi u/jew prattika nazzjonali, ftehim kollettiv jew ftehima bejn iż-żewġ naħat ta' l-industrija jiddeċiedu mod ieħor.	***Il-perijodu sħiħ ta' ħin li fih wieħed ikun 'on-call', inkluż il-parti inattiva għandhom jitqiesu bħala ħin ta' xogħol.***
Il-perijodu li fih il-ħaddiem iwettaq l-attività jew id-doveri tiegħu matul il-ħin li fih ikun 'on-call' għandu dejjem jitqies bħala ħin ta' xogħol.	***Safrattant, skond ftehim kollettiv jew ftehimiet bejn iż-żewġ naħat ta' l-industrija jew permezz ta' liġijiet jew regolamenti, partijiet inattivi ta' ħin li fih wieħed ikun 'on-call' jista' jiġi kkalkulat b'mod speċifiku sabiex jikkonforma mal-massimu ta' ħin ta' xogħol medju fil-ġimgħa kif stipulat fl-Artikolu 6, suġġett għal konformità mal-prinċipji ġenerali dwar il-protezzjoni tas-sikurezza u tas-saħħa tal-ħaddiema.***

Emenda 11
ARTIKOLU 1, PUNT 2 A (ġdid)
Artikolu 2 b (ġdid) (Direttiva 2003/88/KE)

	2a. Qed jiżdied l-Artikolu 2b li ġej:
	"Artikolu 2b
	Fil-każ ta' ħaddiema li għandhom iżjed minn kuntratt wieħed ta' xogħol, u għall-għanijiet ta' implimentazzjoni ta' din id-direttiva, il-ħin ta' xogħol ta' ħaddiem

għandu jkun it-total tal-perijodi ta' ħin maħdum għal kull wieħed mill-kuntratti."

Justification

The purpose of this amendment is to make it clear that workers with multiple contracts are covered by the directive. Their incorporation within its scope is justified on the grounds of their vulnerability and health and safety issues relating to such workers.

Emenda 12
ARTIKOLU 1, PUNT 2 B (ġdid)
Artikolu 13, paragrafu 1 a (ġdid) (Direttiva 2003/88/KE)

2b. Il-paragrafu 1a li ġej għandu jiddaħħal fl-Artikolu 13:

"Stati Membri għandhom jieħdu l-miżuri neċessarji, skond il-liġi, regolament jew dispożizzjoni xierqa oħra, biex iħeġġu lil min iħaddem, li jridu jorganizzaw ix-xogħol skond ċertu mudell, biex iqisu l-bżonnijiet tal-ħaddiema ħalli jirrikonċiljaw il-ħajja professjonali ma' dik familjari. Stati Membri għandhom, b'mod partikulari, jieħdu l-miżuri neċessarji biex jiżguraw li:

- min iħaddem javża sew u minn qabel lill-ħaddiema dwar kwalunkwe tibdil fil-mudell tal-ħin tax-xogħol, u

- il-ħaddiema għandhom id-dritt li jitolbu tibdil fis-sigħat u fil-mudelli tax-xogħol tagħhom, u min iħaddem għandu l-obbligu li jikkunsidra rikjesti bħal dawn b'mod ġust, billi jqis il-bżonnijiet flessibbli ta' min iħaddem u tal-ħaddiema. Min iħaddem jista' biss jirrifjuta rikjesti bħal dawn jekk l-iżvantaġġi organizzattivi għal min iħaddem ma jkunux proporzjonati għall-benefiċċju tal-ħaddiem."

Emenda 13
ARTIKOLU 1, PUNT 3
Artikolu 16, punt (b), subparagrafu 2 (Direttiva 2003/88/KE)

Safrattant, Stati Membri jistgħu, skond il-liġi jew regolament, għal raġunijiet ta' objettivi jew tekniċi, jew raġunijiet dwar l-imħassar

organizzazzjoni tax-xogħol, jestendu l-perijodu ta' referenza msemmi hawn fuq għal tnax-il xahar, suġġett għall-konformità mal-prinċipji ġenerali dwar il-protezzjoni tas-sikurezza u tas-saħħa tal-ħaddiema, u basta jkun hemm konsultazzjoni ta' l-imsieħba soċjali kkonċernati u kull sforz isir biex jitħeġġu l-forom relevanti kollha għal djalogu soċjali, inklużi negozjati jekk dan huwa mixtieq mill-partijiet.

Emenda 14
ARTIKOLU 1, PUNT 4, PUNT A
Artikolu 17, paragrafu 1, parti introduttorja (Direttiva 2003/88/KE)

a) F'paragrafu (1), it-termini ***"Artikoli 3 sa 6, 8 u 16"*** għandhom jinbidlu ***għal "Artikoli 3 sa 6, 8 u 16, a) u c)"***	***(a) Il-parti introduttorja ta'*** paragrafu (1), għandha tinbidel ***kif ġej:***
	"Wara konsiderazzjoni xierqa tal-prinċipji ġenerali tal-protezzjoni tas-sikurezza u tas-saħħa tal-ħaddiema, l-Istati Membri jistgħu jidderogaw mill-Artikoli 3 sa 6, 8 u 16, a) u c) meta, skond il-karatteristiċi speċifiċi ta' l-attività kkonċernata, il-perijodu ta' żmien għall-ħin tax-xogħol m'huwiex magħdud u/jew predeterminat jew jista' jiġi determinat mill-ħaddiema nfushom, fil-każ ta':"

Justification

The purpose of the amendment is to restrict derogations to the cases which follow.

Emenda 15
ARTIKOLU 1, PUNT 4, PUNT A A (ġdid)
Artikolu 17, paragrafu 1, punt (a) (Direttiva 2003/88/KE)

	(aa) F'paragrafu 1, punt (a) għandu jinbidel kif ġej:
	"(a) Uffiċjali ta' diriġenza għolja (jew persuni f'pożizzjonijiet kumparabbli), 'senior managers' subordinati għalihom b'mod dirett u persuni li jintgħażlu direttament mill-bord ta' diretturi,"

Justification

The Commission's proposal is unclear and too vague.

Emenda 16
ARTIKOLU 1, PUNT 4 PUNT B
Artikolu 17, paragrafu 2 (Direttiva 2003/88/KE)

(b) F'paragrafu 2, il-kliem "b'*kondizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *konċernati*" huma sostitwiti bil-kliem "b'*kondizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *konċernati* ***f'dewmien raġonevoli li ma jistax ikun aktar minn tnejn u sebgħin siegħa***".	(b) F'paragrafu 2, il-kliem "b'*kundizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *kkonċernati*" huma sostitwiti bil-kliem "b'*kundizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *kkonċernati* ***wara perijodi ta' żmien fuq xogħol, bi qbil mal-liġi relevanti, ftehim kollettiv jew ftehimiet oħra bejn iż-żewġ partijiet ta' l-industrija***".

Emenda 17
ARTIKOLU 1, PUNT 4, PUNT D), PUNT I)
Artikolu 17, paragrafu 5, l-ewwel subparagrafu (Direttiva 2003/88/KE)

"B'konformità ma' paragrafu 2 ta' dan l-Artikolu, jista' jkun *derogat* fl-Artikolu 6, fil-każ ta' tobba li jkunu għadhom qed jiġu mħarrġa, *fil-kondizzjonijiet iffissati mit-tieni sas-**seba'** daħla ta' dan il-paragrafu*."	"B'konformità ma' paragrafu 2 ta' dan l-Artikolu, jista' jkun *hemm derogi* fl-Artikolu 6 fil-każ ta' tobba li jkunu għadhom qed jiġu mħarrġa, *bi qbil mad-dispożizzjonijiet stipulati fis-subparagrafi 2 sa **6.***"

Emenda 18
ARTIKOLU 1, PUNT 5
Artikolu 18, subparagrafu 3 (Direttiva 2003/88/KE)

5. Fl-Artikolu 18, it-tielet *paragrafu*, il-kliem "*b'kondizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *konċernati*" *huma sostitwiti* bil-kliem "*b'kondizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *konċernati* ***f'dewmien raġonevoli li ma jistax ikun aktar minn 72 siegħa***".	5. Fl-Artikolu 18, it-tielet *subparagrafu*, il-kliem "*bil-kundizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *kkonċernati*" *qed jiġi sostitwit* bil-kliem "*bil-kundizzjoni* li perijodi ekwivalenti ta' mistrieħ ta' kumpens ikunu mogħtija lill-ħaddiema *kkonċernati* ***wara perijodi ta' żmien fuq xogħol, bi qbil mal-liġi relevanti, mal-ftehim kollettiv jew ma' ftehimiet oħra bejn iż-żewġ naħat ta' l-industrija***".

Emenda 19
ARTIKOLU 1, PUNT 6
Artikolu 19 (Direttiva 2003/88/KE)

L-Artikolu 19 qed jiġi sostitwit b'dan li ġej:

L-għażla li jkun hemm deroga mill-Artikolu 16 tista' tintuża sabiex jittawwal il-perijodu ta' referenza sa mhux iktar minn 12-il xahar, għal raġunijiet oġġettivi jew tekniċi, jew għal raġunijiet relatati ma' l-organizzazzjoni tax-xogħol, dan suġġett għall-osservanza tal-prinċipji ġenerali marbuta mal-ħarsien tas-sikurezza u tas-saħħa tal-ħaddiema:

a) f'każijiet fejn il-ħaddiema jkunu koperti minn ftehimiet kollettivi jew ftehimiet bejn iż-żewġ naħat ta' l-industrija kif stipulat fl-Artikolu 18; jew

b) permezz ta' liġi jew regolament f'każijiet fejn il-ħaddiema ma jkunux koperti minn ftehimiet kollettivi jew ftehimiet bejn iż-żewġ naħat ta' l-industrija, sakemm l-Istat Membru kkonċernat jieħu l-miżuri neċessarji biex jiżgura li:

- min iħaddem jinforma u jikkonsulta lill-ħaddiema u/jew lir-rappreżentanti tagħhom dwar l-introduzzjoni tal-mudell propost tal-ħin tax-xogħol u dwar bidliet fih;

- min iħaddem jieħu l-miżuri neċessarji biex jevita u/jew jirrimedja kull riskji ta' saħħa jew sikurezza li jistgħu jkunu marbuta mal-mudell propost tal-ħin tax-xogħol.

Emenda 20
ARTIKOLU 1, PUNT 8, PUNT B A (ġdid)
Artikolu 22, paragrafu 3 a (ġdid) (Direttiva 2003/88/KE)

(ba) Fl-Artikolu 22 għandu jiżdied dan il-paragrafu li ġej:

"3a. Dan l-Artikolu għandu jiġi rrevokat wara 36 xahar minn meta din id-Direttiva tidħol fis-seħħ."

Emenda 21
ARTIKOLU 1, PUNT 8,
Artikolu 22, paragrafu 1 a, punt a (Direttiva 2003/88/KE)

a) l-ebda persuna li tħaddem ma tista' titlob ħaddiem biex jaħdem aktar minn tmienja u erbgħin siegħa matul *il-perijodu* ta' sebat ijiem, ikkalkulati bħala l-medja tal-perijodu ta' referenza *indikat* fl-Artikolu *16, punt b)*, *sakemm ma* jkunx *ottiena* l-kunsens *bil-miktub* tal-ħaddiem sabiex jagħmel *xogħol simili*. *Il-validità ta' ftehim simili ma tistax tkun aktar minn* ***sena****, li tista' tkun imġedda. Akkordju* mogħti waqt l-iffirmar tal-kuntratt individwali ta' xogħol jew matul kull perijodu ta' prova *jkun ineżistenti*;	a) l-ebda persuna li tħaddem ma tista' titlob ħaddiem biex jaħdem aktar minn tmienja u erbgħin siegħa matul *perijodu* ta' sebat ijiem, ikkalkulati bħala l-medja tal-perijodu ta' referenza *imsemmi* fl-Artikolu *16 b)*, *sakemm l-ewwel****, fuq il-bażi ta' tibdil fl-ordnijiet,*** *ma* jkunx *kiseb* l-kunsens tal-ħaddiem sabiex jagħmel *dan it-tip ta' xogħol*. *Ftehim bħal dan għandu jkun validu għal perijodu ta' mhux iktar minn* ***sitt xhur*** *u jkun jista' jiġġedded. Ftehim* mogħti waqt l-iffirmar tal-kuntratt individwali ta' xogħol jew matul kull perijodu ta' prova *m'għandux ikollu effett legali*;

Emenda 22
ARTIKOLU 1, PUNT 8 A (ġdid)
Artikolu 24, paragrafu 3 (Direttiva 2003/88/KE)

	8a. L-Artikolu 24, paragrafu 3, għandu jiġi emendat kif ġej:
	"3. Kull ħames snin, b'effett mit-23 ta' Novembru, 1996, il-Kummissjoni għandha tippreżenta lill-Parlament Ewropew, lill-Kunsill u lill-Kumitat Ekonomiku u Soċjali rapport dwar l-implimentazzjoni ta' din id-Direttiva, fosthom, fejn ikun hemm bżonn, proposti xierqa għall-emenda tagħha sabiex jiġu kkunsidrati żviluppi fis-saħħa u fis-sikurezza fil-post tax-xogħol u r-rikonċiljazzjoni tal-familja u tax-xogħol."

Emenda 23
ARTIKOLU 1, PUNT 9
Artikolu 24 a (Direttiva 2003/88/KE)

9. Qed jiżdied il-paragrafu 24 li ġej:	***imħassar***
"Artikolu 24a	
Rapport tat-tħaddim	

Mhux aktar tard minn ħames snin wara d-data prevista fl-Artikolu 3 ta' din id-direttiva, il-Kummissjoni tagħmel rapport lill-Parlament Ewropew, lill-Kunsill u lill-Kumitat Ekonomiku u Soċjali Ewropew dwar it-tħaddim tad-dispożizzjonijiet ta' din id-direttiva, b'mod partikulari ta' l-Artikolu 22, paragrafi 1 u 2, akkumpanjati, jekk ikun hemm bżonn, minn proposti adatti, li jkollhom l-għan notevolment, jekk hi tikkalkula li hu neċessarju, li titneħħa gradwalment din id-dispożizzjoni.

Emenda 24
ARTIKOLU 3, PARAGRAFU 2 A (ġdid)

L-Istati Membri għandhom jiżguraw li kull ftehima li saret mill-ħaddiema bi qbil mal-kliem oriġinali ta' l-Artikolu 22 (1)(a) tad-Direttiva 2003/88 u li jkunu għadhom validi fid-data ta' l-implimentazzjoni msemmija fl-ewwel paragrafu ta' dan l-Artikolu, għandhom jibqgħu validi għal perijodu li ma jkunx iktar minn sena minn din id-data.

Justification

The aim is to ensure that pre-existing individual opt-out agreements do not immediately become invalid when the current directive is implemented, and that there is a sensible transition period, which mirrors the one year duration of agreements stipulated in Article 22 as amended.

Emenda 25
ARTIKOLU 5

Din id-Direttiva hija indirizzata lill-Istati Membri.	Din id-Direttiva hija indirizzata lill-Istati Membri. ***Malli tiġi ppubblikata, għandha tintbagħat kopja ta' din id-Direttiva lill-gvernijiet u lill-parlamenti tal-pajjiżi kandidati.***

Justification

Candidate countries should be aware of Parliament's opinion on existing legislation.

NOTA SPJEGATTIVA

I. BACKGROUND

Council Directive 93/104/EC[1] of 23 November 1993 concerning certain aspects of the organisation of working time contains two provisions (Articles 17(4) and 18(1)(b)(i)) that should have been reviewed by 23 November 2003. These concern the exceptions to the REFERENCE PERIOD for the working week as defined in Article 6, and the OPT-OUT, the possibility of waiving Article 6 (48-hour maximum weekly working time) if a worker so agrees.

In its communication of 30 December 2003[2] and the proposal for a directive issued on 22 September 2004[3] the Commission also proposes to change the DEFINITIONS OF WORKING TIME (Article 2) and depart from the case law of the Court of Justice (SIMAP[4] and Jäger[5] cases), which stipulates that on-call duty is invariably to be considered working time when it entails physical presence at the workplace.

The social partners, consulted by the Commission under Article 138 of the Treaty, have ruled out the possibility of reaching an agreement in this area, on account of their opposing views.

Parliament stated its position on these matters in February 2004[6]. The Commission proposal has to all intents and purposes disregarded that opinion, above all where the individual opt-out is concerned.

The Commission, in short, is proposing

1. to keep the individual opt-out whilst tightening up the conditions for its application when there is no collective agreement in force or no such agreement can be concluded;
2. to allow the Member States to extend the reference periods to not more than 12 months, subject merely to consultation of the social partners concerned;
3. to correct the definitions of working time, so that the inactive part of on-call time is not considered 'working time'.

II. RIGHTS, VALUES, AND OBJECTIVES AFFECTED BY THE PROPOSAL

The Commission has indicated that the revision must take four criteria into account, namely: protecting workers' health and safety to a high degree, bringing flexibility to the regulations,

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[1] OJ L 397, 13.12.1993, p. 18.
[2] COM(2003)0843.
[3] COM(2004)0607
[4] Judgment of the Court of 3 October 2000 in case C-303/98, Sindicato de Médicos de Asistencia Pública (SIMAP) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana [2000] ECR I-07963.
[5] Judgment of the Court of 9 October 2003 in case C-151/02, Reference for a preliminary ruling: Landesarbeitsgericht Schleswig-Holstein (Germany) in the proceedings pending before that court between Landeshauptstadt Kiel and Norbert Jaeger [2003] ECR I-8389.
[6] Cercas report, A5-0006/2004.

making working and family life more compatible, and avoiding needless constraints for companies. This approach can be accepted on the understanding that its main aim, and the only possible legal basis for it, has to be to guarantee the health and safety of workers.

It will be necessary to reach a compromise between the demands of the Member States, the social partners, and the political views within Parliament. This will not be possible unless a balance is struck between safety and flexibility. This compromise will be possible, proceeding from the premiss indicated by the Commission, taking its cue in this instance from the Kok report, 'that a greater flexibility is not contradictory with a high level of protection of workers' health and safety, provided that there are minimum regulations and safeguarding as well as suitable controls'.

1. This principle of European minimum regulations in general, and regulations governing the maximum working week in particular, is, paradoxically, the main difficulty involved in reviewing the directive, strongly focused as it is **on the opt-out debate**. In its 2004, report the European Parliament opposed keeping the opt-out in place, since this would abolish the principle of minimum regulation and allow Member States to use European social law as they please, in violation of Treaty principles and contrary to all the evidence that working time without limits poses a serious risk to workers' health and safety as well as to the work-life balance. **In this scenario we would not be making the regulations more flexible, but doing away with them completely, which is unacceptable.**

   The theoretical and legal difficulties of this type were already made clear in the original elements of the directive. Its legal basis is Article 118a of the Treaty (the present Article 137), which enables European minimum provisions to be laid down to protect workers' health and safety with the aim of 'harmonising in a progressive sense the existing conditions'. The original directive was already called into question by those who denied the relationship between regulation under it (especially of the maximum working week) and the level of health and safety. The controversy found concrete expression in the judgment handed down on 12 November 1996 in Case C-84/94, United Kingdom v the Council of the European Union[1], in which the Court of Justice ruled against the British demand, indicating that protecting the health and safety of all European workers was consistent with the Treaty requirement and did not constitute a violation of the proportionality principle.

   The European Social Charter and the Charter of Fundamental Rights shed light on the privileged place to be accorded to social rights as true fundamental rights enjoyed by citizens of the Union. Article II-91 of the Treaty establishing a Constitution for Europe states that:

   1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
   2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods, and to an annual period of paid leave.

[1] Case C-84/94, [1996] ECR I-5755.

In its Impact Evaluation[1], the Commission has highlighted numerous research studies which demonstrate that fatigue increases with the number of hours worked, the inference being that 'working time above 50 hours can, in the long term, have detrimental effects on workers' health and the safety' (page 21), and it also concludes that 'it can be presumed that the situation would be better without the opt-out' (page 24).

In the same study, the Commission concludes (page 25) that long working hours make it difficult for women to enter certain male-dominated occupations and undermine men's already weak commitment to their parental role.

It is not enough to avoid abuses, given that we face problems affecting not only workers' freedom, but also their health and safety. On the other hand, it would be highly counter-productive to create even more complications in terms of red tape and the demands on companies. That being the case, it is necessary to end the opt-out in Member States where it has been introduced, within a reasonable transitional period.

2. Regarding the **reference periods**, the standard rule under the directive is 4 months (Article 16(b)), to which exceptions can be made (Articles 17 and 19) whereby a period may be extended to 6 or even 12 months by collective agreement. As has already been stated, the Commission is now proposing that 12 months should explicitly be made the standard rule, thus annualising maximum working time, the only proviso being that the social partners be consulted.

   Extending the reference periods meets reasonable concerns regarding the flexibility of regulations; it is true that the current directive permits flexibility only in those companies in which collective agreements are in force, and it is logical that such flexibility should be available to all companies in order to accommodate the possible fluctuations in demand for their goods and services.

   Extending the reference period can have an impact on the protection of workers' health and safety, in so far as it will permit a longer working week and some longer working days over the year. But it is no less true that annualisation does not change the pattern as regards the total number of working hours and the total number of rest hours, its effect being merely to spread them differently. For this reason, the rapporteur considers that **annualisation might be acceptable under conditions guaranteeing** reasoned and reasonable implementation, with checks and a guarantee of **protection of health and safety**.

3. The Commission's aim of changing **the definitions of working time** and overturning the rulings of the Court of Justice on the inactive part of on-call time **must be analysed more carefully**. On the one hand, it is a proven fact that considering the inactive part of on-call periods as working time poses financial problems and serious difficulties for the smooth running of health centres and other workplaces of a similar nature in countries or places where there is a shortage of appropriate personnel. The difficulties posed by the dearth of professionals are the most serious issue and European legislation must take

[1] ESA(2004)1154 Évaluation d'impact approfondie, 22 September 2004.

them into account, given that, in very specific cases, they might interfere with the normal operation of crucial services for citizens.

However, **the solution being sought by the Commission is not the best one**. We cannot lightly alter the *acquis comunautaire* and legislate against the case law of the Court of Justice, which has been repeatedly and supremely well argued and established that on-call duty is working time. It is essential that the European institutions respect the inviolability of the acts that they have adopted and which affect the legal situation of legal persons and no wide-ranging analysis has been conducted of how the change of definitions would affect safety and health principles and compensatory rest. For all these reasons, it is necessary to look for a less traumatic solution entailing fewer social costs.

Such a solution may involve **keeping the current definitions and respecting the rulings** of the European Court of Justice as regards all their direct and indirect effects, whilst **opening the door to a solution for short-term conflicts** in those Member States or institutions where public service management is threatened on account of staff shortages. Accordingly, in such cases, and subject to additional guarantees, it should be permitted to **allow for the inactive part of on-call time in a different way when calculating the maximum working week**, giving preference to the conventional method where possible and confining the above measure to situations and persons requiring it.

4. Finally, **the aim of reconciling family and working life must be covered more comprehensively** than in the present Commission proposal. **This compromise must be reflected in the enacting terms.**

20.4.2005

OPINJONI TAL-KUMITAT GĦALL-INDUSTRIJA, IR-RIĊERKA U L-ENERĠIJA

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time (COM(2004)0607 – C6-0122/2004 – 2004/0209(COD))

Draftsman: Nils Lundgren

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament

Amendment 1
CITATION 2 A (new)

Having regard to the conclusions of the Lisbon Council.

Justification

The important Lisbon conclusions were reached after the original Directive was drawn up, and so should be taken into account in this Review.

[1] OJ C ... /Not yet published in OJ.

Amendment 2
RECITAL 7

(7) It is necessary to strike a new balance between the protection of workers' health and safety and the need to give companies more flexibility in the organisation of working time, in particular with regard to on-call time and, more specifically, to inactive parts of on-call time.	(7) It is necessary to strike a new balance between the protection of workers' health and safety and the need to give companies ***and individuals*** more flexibility in the organisation of working time, in particular with regard to on-call time and, more specifically, to inactive parts of on-call time. ***The Directive does not prevent a flat-rate calculation of the inactive part of on-call time in accordance with national customs.***

Justification

This recital seeks to make it clear that it is continuing to be a matter for the Member States to decide how and to what extent they regulate the active and inactive parts of on-call time under national law.

Amendment 3
RECITAL 9 A (new)

	(9a) In practice, certain Member States that do not widely apply the provisions made in Article 22(1), use generous definitions of autonomous workers to exempt them from many aspects of current working time legislation.

Justification

In the Netherlands for example, an autonomous worker is anyone who earns three times the national minimum wage - approximately 10-14% of the workforce - or anyone who earns two times the minimum wage and who works in a management position.

Amendment 4
ARTICLE 1, POINT 2
Article 2 a (Directive 2003/88/EC)

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	***The entire period of on-call time, including the inactive part, shall be regarded as working time. However, Member States shall have the option, subject to compliance with the general principles relating to the***

two sides of industry decides otherwise.	***protection of the safety and health of workers, and provided that the social partners concerned have been consulted, of allowing, by means of laws, regulations or collective agreements or agreements between the two sides of industry, inactive on-call periods to be counted in a specific manner for the purpose of calculating the average maximum weekly working time provided for in Article 6, provided that the workers concerned are afforded adequate compensatory rest, and provided that pregnant women and parents of children under the age of one are exempt from such measures, if they so request, or are afforded appropriate protection.***
The period during which the worker carries out his activity or duties during on-call time shall always be regarded as working time.	

Amendment 5
ARTICLE 1, POINT 2 A (new)
Article 13, paragraph 1 a (new) (Directive 2003/88/EC)

	2a) The following paragraph shall be added to Article 13:
	"Member States shall take measures to ensure that employers shall announce the applicable working time pattern or a change in the working time pattern to the woker at least 4 weeks ahead, without prejudice to collective agreements or agreements between the two sides of industry regulating otherwise."

Justification

Workers are entitled to advance warning of any change to their working patterns.

Amendment 6
ARTICLE 1, POINT 3
Article 16, point b, subparagraph 2 (Directive 2003/88/EG)

However, Member States may, by law or regulation, for objective or technical reasons, or reasons concerning the organisation of work, extend the reference	***deleted***

period referred to above to twelve months, subject to compliance with the general principles relating to the protection of the safety and health of workers, and provided there is a consultation of the social partners concerned and every effort is made to encourage all relevant forms of social dialogue, including negotiation if the parties so wish.	

Justification

The extension of the reference period for Article 6 from four to twelve months (see Amendment to Article 16, point b, subparagraph 1 makes this subparagraph redundant.

Amendment 7
ARTICLE 1, POINT 4, POINT A
Article 17, paragraph 1 (Directive 2003/88/EC)

a) In paragraph (1), the terms "Articles 3 to 6, 8 and 16" shall be replaced by "Articles 3 to 6, 8 and 16, a) and c)".	a) In paragraph (1), the terms "Articles 3 to 6, 8 and 16" shall be replaced by "Articles 3 to 6, 8 and 16, a) and c). ***The term "particularly" is deleted and point (a) is replaced by the following:*** ***"(a) Chief Executive Officers or comparable officers, and managing executives with autonomous decision-taking powers directly subordinated to them;".***

Justification

The current definition is too wide and open to a lot of abuse. The aim is to protect autonomous workers.

Amendment 8
ARTICLE 1, POINT 4, POINT B
Article 17, paragraph 2 (Directive 2003/88/EC)

b) In paragraph (2), the terms "provided that the workers concerned are afforded equivalent periods of compensatory rest" are replaced by "provided that the workers concerned are afforded equivalent periods of	b) In paragraph (2), the terms "provided that the workers concerned are afforded equivalent periods of compensatory rest" are replaced by "provided that the workers concerned are afforded equivalent periods of

compensatory rest ***within a reasonable period, which cannot be longer than seventy-two hours***".	compensatory rest ***at times immediately following the periods of work concerned, save where otherwise provided by collective agreement or agreement between the two sides of industry."***

Justification

The text is too vague as to how workers are afforded compensatory rest. It must be clear that derogations from taking compensatory rest immediately after the period of works concerned should only be allowed through collective agreements or agreements between the two sides of industry.

Amendment 9
ARTICLE 1, POINT 5
Article 18, paragraph 3 (Directive 2003/88/EC)

In Article 18, third subparagraph, the expression "on condition that equivalent compensating rest periods are granted to the workers concerned" is replaced by "on condition that equivalent compensating rest periods are granted to the workers concerned within a reasonable period, ***which cannot exceed seventy-two hours***".	In Article 18, third subparagraph, the expression "on condition that equivalent compensating rest periods are granted to the workers concerned" is replaced by "on condition that equivalent compensating rest periods are granted to the workers concerned within ***seventy-two hours or*** within a reasonable period."

Justification

This amendment is intended to take into account to a greater extent the jurisdiction of the ECJ, and also the needs of business which are not served by the requirement that compensatory rest periods must be taken within 72 hours.

Amendment 10
ARTICLE 1, POINT 6
Article 19 (Directive 2003/88/EG)

Article 19 is replaced by the following:	***deleted***
"Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons, or reasons concerning the organisation of work, collective agreements or agreements concluded between the two sides of industry	

to set reference periods, concerning the maximum weekly working time, in no case exceeding twelve months."

Justification

The extension of the reference period for Article 6 from four to twelve months (see Amendment to Article 16, point (b), subparagraph 1 of the original Directive, makes this paragaph superfluous.

PROĊEDURA

Title	Proposal for a directive of the European Parliament and of the Council concerning certain aspects of the organisation of working time
References	COM(2004)0607 – C6-0122/2004 – 2004/0209(COD)
Committee responsible	EMPL
Committee asked for its opinion Date announced in plenary	ITRE 27.1.2005
Enhanced cooperation	
Draftsman Date appointed	Nils Lundgren 15.12.2004
Discussed in committee	20.4.2004
Date amendments adopted	20.4.2005
Result of final vote	for: 21 against: 20 abstentions: 5
Members present for the final vote	Ivo Belet, Šarūnas Birutis, Jan Březina, Philippe Busquin, Jerzy Buzek, Joan Calabuig Rull, Jorgo Chatzimarkakis, Giles Chichester, Garrelt Duin, Lena Ek, Adam Gierek, Umberto Guidoni, András Gyürk, Fiona Hall, Rebecca Harms, Ján Hudacký, Romana Jordan Cizelj, Werner Langen, Anne Laperrouze, Pia Elda Locatelli, Nils Lundgren, Eluned Morgan, Pier Antonio Panzeri, Vincent Peillon, Umberto Pirilli, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Teresa Riera Madurell, Mechtild Rothe, Paul Rübig, Andres Tarand, Britta Thomsen, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Alejo Vidal-Quadras Roca, Dominique Vlasto
Substitutes present for the final vote	Malcolm Harbour, Satu Hassi, Erna Hennicot-Schoepges, Lambert van Nistelrooij, Vittorio Prodi, John Purvis, Bernhard Rapkay
Substitutes under Rule 178(2) present for the final vote	Richard James Ashworth

4.4.2005

OPINJONI TAL-KUMITAT GĦAD-DRITTIJIET TAN-NISA U GĦALL-UGWALJANZA BEJN IS-SESSI

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time (COM(2004)0607 – C6-0122/2004 – 2004/0209(COD))

Draftswoman: Věra Flasarová

AMENDMENTS

The Committee on Women's Rights and Gender Equality calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
Amendment 1 RECITAL 5	
(5) Reconciliation between work and family life is an essential element to allow the Union to reach the objectives set in the Lisbon Strategy. It not only creates a more satisfactory working atmosphere, but also means workers' needs are taken into account	(5) Reconciliation between work and family life is an essential element to allow the Union to reach the objectives set in the Lisbon Strategy. It not only creates a more satisfactory working atmosphere, but also means workers' needs are taken into account

[1] Not yet published in OJ.

more, particularly those with family responsibilities. Several of the modifications introduced by Directive 2003/88/EC, ***particularly in relation to Article 22,*** allow a better compatibility between work and family life.	more, particularly those with family responsibilities. Several of the modifications introduced by Directive 2003/88/EC ***aim to*** allow a better compatibility between work and family life.

Justification

Article 22 of the Directive concerns the opt-out principle, i.e. the option available to Member States of providing for a working week of more than 48 hours, which is the maximum provided in Article 6. However, it has been clearly demonstrated that long working hours pose not only a risk to workers' health and safety but are also a hindrance to reconciliation of work and family life. The specific reference to Article 22 as a provision that promotes such reconciliation is therefore incorrect.

Amendment 2
RECITAL 6

(6) In this context, it is for Member States to ***encourage*** social partners ***to*** conclude agreements, at the appropriate level, establishing rules to ensure better compatibility between work and family life.	(6) In this context, it is for Member States to ***ensure that*** social partners conclude agreements, at the appropriate level, establishing rules to ensure better compatibility between work and family life.

Justification

Reconciliation of work and family life is an essential requirement, the correct application of which should be monitored by the Member States and not left to the sole discretion of the social partners.

Amendment 3
RECITAL 7

(7) It is necessary to strike a new balance between the protection of workers' health and safety ***and the need to give companies more flexibility in the organisation of working time, in particular with regard to on-call time and, more specifically, to inactive parts of on-call time.***	(7) It is necessary to strike a new balance between the protection of workers' health and safety***, reconciliation of work and family life and the organisation of flexible working time. As regards the organisation of working time, including on-call time, account must be taken of the fact that long working hours constitute an obstacle, not only to the reconciliation of work and family life and, therefore, to women's access to employment, but also to greater participation by men in family life.***

Justification

There is a need to strike a balance between the protection of workers' health and safety, reconciliation of work and private life, and flexibility in the organisation of working time. These are inextricably linked considerations. There should not be any reference to inactive periods of on-call time because it is a distinction that should not be made as it contravenes the rulings of the Court of Justice which define working time in terms of the physical presence of the worker at the place of work and his/her availability to the employer.

Amendment 4
RECITAL 7 A (new)

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

Justification

The Court rightly argues that a worker who is required to keep himself available to the employer at the place determined by the latter for the whole duration of periods of on-call duty, is subject to appreciably greater constraints than a worker on stand-by since the worker has to remain apart from the family and social environment and has less freedom to manage the time during which the professional services are not required. Therefore, workers under those conditions cannot be regarded as being at rest during the periods of on-call duty when they are not actually carrying on any professional activity.

Amendment 5
RECITAL 9

(9) The experience gained in the application of Article 22(1) shows that the individual final decision not to be bound by Article 6 of the Directive ***can be*** problematic in two respects: the protection of workers' health and safety and the freedom of choice of the worker.	(9) The experience gained in the application of Article 22(1) shows that the individual final decision not to be bound by Article 6 of the Directive ***is*** problematic ***and has led to abuses*** in two respects: the protection of workers' health and safety and the freedom of choice of the worker. ***Therefore, the opt-out provision should no longer be applicable.***

Justification

The opt-out provision should be abolished as soon as possible since it is in flagrant contradiction to the objectives and provisions of the Directive and with the fundamental principles of the protection of health and safety. In addition, it is against the principles of the Treaty and contradicts all the evidence that indicates that working time without limits poses a serious risk to workers' health and safety, as well as to the reconciliation of family and professional life.

Amendment 6
RECITAL 14

(14) This Directive respects fundamental rights and observes the principles specifically recognised in ***particular by*** the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect of the right to fair and equitable working conditions (Article 31 of the Charter ***of Fundamental Rights of the European Union***).	(14) This Directive respects fundamental rights and observes the principles specifically recognised in the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect of the right to fair and equitable working conditions (Article 31 of the Charter) ***and the right to reconcile family and professional life (Article 33 of the Charter).***

Justification

Conciliation of family and working life is among the three criteria indicated by the Commission that should be met in all proposals in this area.

Amendment 7
ARTICLE 1, POINT 2 A (new)
Article 6, introductory part (Directive 2003/88/EC)

	2a. In Article 6, the introduction is replaced by the following:
	"Member States shall take the necessary measures to ensure that, in keeping with the need to protect the safety and health of workers and to reconcile work and family life:"

Justification

The need to reconcile work and family must always be taken into account in fixing the number of weekly working hours and organising working time.

Amendment 8
ARTICLE 1, POINT 2 B (new)
Article 13 (Directive 2003/88/EC)

2b. Article 13 is replaced by the following:

"Article 13

Pattern of work

Member States shall take the necessary measures to ensure that an employer who intends to organise work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, depending on the type of activity, and of safety and health requirements, in particular for pregnant workers and workers who have recently given birth or are breastfeeding and disabled people, especially as regards breaks during working time."

Justification

Special protection should be given to workers who are pregnant, have recently given birth or are breastfeeding when organising patterns of work, as provided by Articles 4 and 5 of Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Recital 16 of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation states that 'The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.' Articles 5 and 7 also provide for special protection for disabled people at the workplace.

Amendment 9
ARTICLE 1, POINT 2 C (new)
Article 13, paragraph 1a (new) (Directive 2003/88/EC)

2c. In Article 13, the following paragraph shall be added:

"Member States shall take the necessary measures to encourage employers, in organising working patterns, to take account of the need to reconcile work and

	family life. In particular, they shall enable workers to request changes to their working hours and working pattern and require employers to consider such requests in a fair and equitable manner."

Justification

Working patterns must always be organised taking into consideration the need to reconcile work and family life, which is essential if the objectives of the Lisbon strategy are to be achieved.

Amendment 10
ARTICLE 1, POINT 3
Article 16, point (b) (Directive 2003/88/EC)

b) for the application of Article 6 (maximum weekly working time), a reference period not exceeding four months.	b) for the application of Article 6 (maximum weekly working time), a reference period not exceeding four months.
However, Member States may, by law or regulation, for objective or technical reasons, or reasons concerning the organisation of work, extend the reference period referred to above to twelve months, subject to ***compliance with the general principles relating to*** the protection of the safety and health of workers**,** and provided there is a consultation of the social partners concerned and every effort is made to encourage all relevant forms of social dialogue, including negotiation if the parties so wish.	However, Member States may, by law or regulation, for objective or technical reasons, or reasons concerning the organisation of work, extend the reference period referred to above to twelve months, subject to ***stringent checks and guarantees concerning*** the protection of the safety and health of workers, and provided there is a consultation of the social partners concerned and every effort is made to encourage all relevant forms of social dialogue, including negotiation if the parties so wish. ***To that end, there should be particular emphasis on increasing the participation and active presence of women and women's organisations in the process of social dialogue.***
Whenever the duration of the employment contract is less than one year, the reference period cannot be longer than the duration of the employment contract.	Whenever the duration of the employment contract is less than one year, the reference period cannot be longer than the duration of the employment contract.
The periods of paid annual leave, granted in accordance with Article 7, and the periods of sick leave shall not be included or shall be neutral in the calculation of the average***;***	The periods of paid annual leave, granted in accordance with Article 7, and the periods of sick leave shall not be included or shall be neutral in the calculation of the average***.***
	The option of departing from the reference

period of four months shall be excluded in the case of pregnant workers or working mothers of single-parent or large families.

All the abovementioned guarantees shall be supplemented by the establishment and proper operation of an effective mechanism to verify that those guarantees are fulfilled, and by procedures ensuring that the Member States effectively comply therewith;

Justification

The provision concerning the reference period of weekly working time allows the Member States a degree of flexibility, which is acceptable provided it is accompanied by strict guarantees on workers' health and safety. For that reason, it is important that the social partners are consulted and that groups of workers which traditionally play a minor part in social dialogue are encouraged to take part. The guarantees enabling the reference period to be extended should be re-examined in the light of the particular needs and difficulties faced by women workers, who are more exposed to the risk of abuse of the derogation provided by the Directive. Moreover, the need to monitor compliance with these guarantees should be emphasised since it makes no sense to draw up a list of them unless there are also effective national supervisory authorities.

Amendment 11
ARTICLE 1, POINT 8
Article 22, paragraphs 1 and 1a (Directive 2003/88(EC)

8. Article 22 ***is modified as follows:***	8. ***In*** Article 22, paragraph 1 is replaced by the following:
a) Paragraph 1 is replaced by the following:	
"1. Member States shall ***have the option not to apply Article 6, while respecting the general principles of the protection of the safety and health of workers. The implementation of this option must, however, be expressly foreseen by a collective agreement or an agreement between the two sides of industry at national or regional level or, in accordance with national law and/or practice,, by means of collective agreements or agreements concluded between the two sides of industry at the appropriate level.***	"1. Member States shall ***ensure that from the date referred to in Article 4 of this Directive, weekly working time, including overtime, shall not exceed 48 hours."***
The implementation of this option is also possible, by virtue of an agreement between	

the employer and the worker, in cases where there is no collective agreement in force and there is no workers' representation 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."
b) The following paragraph (1a) shall be added:
"(1a) In any case, Member States making use of the possibility provided for by paragraph 1 shall take the necessary measures to ensure that:
a) no employer requires a worker to work more than forty-eight 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, renewable. An agreement given at the time of the signature of the individual employment contract or during any probation period shall be null and void.
b) no worker suffers any detriment because he is not willing to give his agreement to perform such work;
c) no worker works more than sixty-five hours in any one week, unless the collective agreement or agreement between the two sides of industry provides otherwise;
d) the employer keeps up-to-date records of all workers who carry out such work and of the number of hours actually worked;
e) the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working time;
f) the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven

days, calculated as an average for the reference period referred to in Article 16(b), as well as information on the number of hours actually worked by the workers concerned."

Justification

The opt-out provision contained in Article 22 should be abolished as soon as possible since it is in flagrant contradiction to the objectives and provisions of the Directive and to the fundamental principles of the protection of health and safety. In addition, it is against the principles of the Treaty and contradicts all the evidence that indicates that working time without limits poses a serious risk to workers' health and safety, as well as to the reconciliation of family and professional life, specially of women.

Amendment 12
ARTICLE 1, POINT 9
Article 24 a (Directive 2003/88/EC)

Not later than five years after the date referred to in Article 3 of this Directive, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of its provisions, ***in particular of Article 22(1) and (2). The Commission shall propose any appropriate amendments, including, if necessary, a phasing out of Article 22(1) and (2).***	Not later than five years after the date referred to in Article 3 of this Directive, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of its provisions ***and their contribution to workers' health and safety, the reconciliation of work and family life, to increasing flexibility in the management of working time and to reducing constraints on companies. The report shall also indicate whether Member States have taken the necessary measures to ensure that the maximum working week does not exceed 48 hours, including overtime.***

Justification

The report on the application of the Directive should contain an assessment of the contribution of the various provisions to the achievement of the objectives set by the Commission. It should also indicate whether the Member States have removed the derogation provided in Article 22(1) from their national legislation/practices within the appointed deadline.

PROĊEDURA

Title	Proposal for a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time
References	COM(2004)0607 - C6-0122/2004 - 2004/0209(COD)
Committee responsible	EMPL
Committee asked for its opinion Date announced in plenary	FEMM 25.10.2004
Enhanced cooperation	No
Draftsperson Date appointed	Věra Flasarová 25.11.2004
Discussed in committee	17.3.2005 31.3.2005
Date amendments adopted	31.3.2005
Result of final vote	for: 19 against: 1 abstentions: 0
Members present for the final vote	Edit Bauer, Edite Estrela, Věra Flasarová, Nicole Fontaine, Lissy Gröner, Zita Gurmai, Lívia Járóka, Piia-Noora Kauppi, Rodi Kratsa-Tsagaropoulou, Urszula Krupa, Astrid Lulling, Angelika Niebler, Doris Pack, Marie Panayotopoulos-Cassiotou, Marie-Line Reynaud, Raül Romeva i Rueda, Eva-Britt Svensson, Anna Záborská
Substitutes present for the final vote	Katerina Batzeli, Elisabeth Jeggle, Christa Klaß
Substitutes under Rule 178(2) present for the final vote	

PROĊEDURA

Title	Proposal for a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time
References	COM(2004)0607 – C6-0122/2004 – 2004/0209(COD)
Legal basis	Articles 251(2) and 137(2) EC
Basis in Rules of Procedure	Rule 51
Date submitted to Parliament	22.9.2004
Committee responsible Date announced in plenary	EMPL 25.10.2004
Committee(s) asked for opinion(s) Date announced in plenary	ITRE FEMM 27.1.2005 25.10.2004
Rapporteur(s) Date appointed	Alejandro Cercas 07.10.2004
Discussed in committee	6.10.2004 17.1.2005 15.3.2005 31.3.2005 19.4.2005
Date adopted	20.4.2005
Result of final vote	for: 31 against: 14 abstentions: 1
Members present for the final vote	Jan Andersson, Roselyne Bachelot-Narquin, Emine Bozkurt, Philip Bushill-Matthews, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Jean Louis Cottigny, Proinsias De Rossa, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Roger Helmer, Stephen Hughes, Ona Juknevičienė, Sepp Kusstatscher, Jean Lambert, Raymond Langendries, Bernard Lehideux, Elizabeth Lynne, Jan Tadeusz Masiel, Mary Lou McDonald, Thomas Mann, Jiří Maštálka, Ana Mato Adrover, Maria Matsouka, Ria Oomen-Ruijten, Csaba Őry, Marie Panayotopoulos-Cassiotou, Jacek Protasiewicz, José Albino Silva Peneda, Kathy Sinnott, Jean Spautz, Struan Stevenson, Anne Van Lancker, Gabriele Zimmer
Substitutes present for the final vote	Mihael Brejc, Udo Bullmann, Françoise Castex, Anne Elisabet Jensen, Leopold Józef Rutowicz, Elisabeth Schroedter, Marc Tarabella, Patrizia Toia, Barbara Weiler, Anja Weisgerber
Date tabled – A6	25.4.2005 A6-0105/2005