

# EUROPEAN PARLIAMENT

2004



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*Committee on Industry, Research and Energy*

**2004/0209(COD)**

20.4.2005

## **OPINION**

of the Committee on Industry, Research and Energy

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

PA\_Leg

## 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:

### Proposal for a directive

Text proposed by the Commission<sup>1</sup>

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Amendments by Parliament

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#### 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.*

#### 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 parent a flat-rate calculation of the inactive part of on-call time in accordance with national customs.***

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<sup>1</sup> OJ C ... /Not yet published in OJ.

*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 C (new)

***(9c) In practice, other Member States who 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 two sides of industry decides otherwise.***

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

***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 protection of the safety and health of workers,***

***- provided there is a consultation of the social partners concerned,***

***of allowing, by means of laws, regulations or collective agreements or agreements between the two sides of industry that inactive on-call periods may 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 or parents of young children (up to 1 year old) are exempt from such measures, if they so request, or are afforded appropriate protection.*

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

*2a) The following paragraph 1a shall be inserted in Article 13:*

*1a. 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 worker 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 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.*

*delete*

*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 compensatory rest ***within a reasonable period, which cannot be longer than seventy-two hours***".

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 ***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: ***delete***

"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 paragraph superfluous.*



## PROCEDURE

<b>Title</b>	Proposal for a directive of the European Parliament and of the Council concerning certain aspects of the organisation of working time
<b>References</b>	COM(2004)0607 – C6-0122/2004 – 2004/0209(COD)
<b>Committee responsible</b>	EMPL
<b>Committee asked for its opinion</b> Date announced in plenary	ITRE 24.9.2004
<b>Enhanced cooperation</b>	
<b>Draftsman</b> Date appointed	Nils Lundgren 15.12.2004
<b>Discussed in committee</b>	20.4.2004
<b>Date amendments adopted</b>	20.4.2005
<b>Result of final vote</b>	for: 21 against: 20 abstentions: 5
<b>Members present for the final vote</b>	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
<b>Substitutes present for the final vote</b>	Malcolm Harbour, Satu Hassi, Erna Hennicot-Schoepges, Lambert van Nistelrooij, Vittorio Prodi, John Purvis, Bernhard Rapkay
<b>Substitutes under Rule 178(2) present for the final vote</b>	Richard James Ashworth