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NOTE

from: General Secretariat
to : Permanent Representatives Committee/Council

Subject : 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
– Outcome of the first reading by the European Parliament
(Strasbourg, 9 to 12 May 2005)

I. INTRODUCTION

The rapporteur, Mr CERCAS (PSE - ES), presented a report containing 25 amendments to the proposal for a Directive, on behalf of the Committee on Employment and Social Affairs. In addition, the political groups tabled 27 further amendments at the plenary sitting.

II. DEBATE

During the debate in plenary, the rapporteur stressed that the purpose of the proposal was to reinforce the European social model by improving workers' working and living conditions. Citizens had great hopes of this new Directive on working time and it was important to give an ambitious response. He was in favour of removing the possibility of individual opt-outs from the maximum weekly working hours within three years. This was a practice which gave Member States an "à la carte" European social law, which was contrary to the fundamental principles of the Treaty. He further insisted that the "on-call time" used in certain professions (mainly medical) should be considered as normal working time. He fully understood the need to retain a degree of flexibility in working time legislation, but a proper balance had to be struck between such flexibility and the demands of safety in the workplace.

The political groups then expressed their views. The PPE/DE group emphasised the difficulty of the individual opt-out issue and took the view that the rules on on-call time should remain a matter for Member States. The PSE came out clearly against any form of opt-out and stressed the need to keep a balance between work and free time. The ALDE group argued that more flexibility was not incompatible with a high level of protection of employees' health and safety. The Verts/ALE group voiced its opposition to any form of individual opt-out, while the GUE/NGL group completely rejected the proposal as a flagrant example of social "dumping".

On behalf of the Commission, Mr Špidla stressed that the intention with this proposal was to ensure a high level of safety and health via clear rules on working time, while retaining a sufficient degree of flexibility. The Commission's aim had been to protect both workers and employers. The Commissioner also emphasised the need to reconcile professional life and free time and hoped that the Parliament and the Council would arrive at a compromise acceptable to all on the issue of the individual opt-out.

III. VOTE

Plenary passed 25 of the 52 amendments tabled. The amendments adopted are set out in Mr CERCAS's report. The Commission's position on these amendments was as follows:

1. Amendments acceptable in whole, in part or after being reworded

Amendments 1, 2, 3, 4, 8, 11, 12, 13, 16, 17, 18, 19 and 24.

2. Amendments not accepted

Amendments 5, 6, 7, 9, 10, 14, 15, 20, 21, 22, 23 and 25.

The texts of the amendments adopted and of the European Parliament's legislative resolution are attached.

Organisation of working time *I**

European Parliament legislative resolution 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.

¹ Not yet published in OJ.

Amendment 1
CITATION 2 A (new)

Having regard to the conclusions of the Lisbon European Council of 23 and 24 March 2000.

Amendment 2
RECITAL 4

(4) More than ten years after the adoption of the Directive 93/104/EC, the initial Directive on the organisation of working time, it is necessary to modernise Community legislation on working time, with a view to **responding** better *to* new realities and demands, both from employers and employees.

(4) More than ten years after the adoption of the Directive 93/104/EC, the initial Directive on the organisation of working time, it is necessary to modernise Community legislation on working time, with a view to **taking** better **account of** new realities and demands, both from employers and employees, **of the need to fulfil the Lisbon objectives and of the case-law of the Court of Justice of the European Communities.**

Amendment 3
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 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.

(5) Reconciliation between work and family life is an essential element to allow the Union to reach the objectives set in the Lisbon Strategy, **in particular to increase the rate of employment of women.** It not only creates a more satisfactory working atmosphere, but also means workers' needs are taken into account more, particularly those with family responsibilities. Several of the modifications introduced by Directive 2003/88/EC **seek to** allow a better compatibility between work and family life.

Amendment 4
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 regards to on-call time and , more specifically, to inactive parts of on-call time.***

(7) It is necessary to ***strengthen*** the protection of workers' health and safety ***despite the challenge of new forms of*** organisation of working time, ***to introduce working time models which provide opportunities for life-long learning for employees, and also to strike a new balance between the reconciliation of work and family life on the one hand, and more flexible organisation of working time on the other.***

Amendment 5
RECITAL 7 A (new)

(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.

Amendment 6
RECITAL 8

(8) The provisions on the derogations to the reference period must also be re-examined, with the objective of simplifying existing arrangements in order to adapt them to the needs of employers and employees.

(8) The provisions on the derogations to the reference period must also be re-examined, with the objective ***of creating possibilities for new working time models, which include lifelong learning arrangements and*** of simplifying existing arrangements in order to adapt them to the needs of employers, ***particularly those of small and medium-sized undertakings and particularly as regards greater flexibility,*** and employees.

Amendment 7
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 in that provision should cease to apply.***

Amendment 8
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 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, ***particularly paragraph 2 thereof, which states that 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) and the right to reconcile family and professional life (Article 33 of that Charter).***

Amendment 9
ARTICLE 1, POINT 1
Article 2, points 1 a and 1 b (Directive 2003/88/EC)

1a. “on-call time”: period during which the worker has the obligation to be available at ***the*** workplace ***in order to intervene, at the employer’s request, to carry out his activity or duties.***

1b. “inactive part of on-call time “: period during which the worker is on call within the meaning of *Article 1a*, but ***not required by his employer to carry out his activity or duties.***

1a. “on-call time”: period during which the worker ***cannot dispose freely of his time and*** has the obligation to be available at ***his*** workplace ***or at another workplace determined by his employer in order to take up his habitual work and/or certain activities and tasks associated with being on duty, in accordance with national laws and/or practice in the Member State concerned.***

1b. "inactive part of on-call time": period during which the worker is on call within the meaning of *point 1a*, but ***is not performing his habitual work or any activities or tasks associated with being on duty, in accordance with national laws and/or practice in the Member State concerned.***

Amendment 10
ARTICLE 1, POINT 2
Article 2a (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, 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.

Amendment 11
ARTICLE 1, POINT 2 A (new)
Article 2 b (new) (Directive 2003/88/EC)

2a. The following Article 2b is inserted:

"Article 2b

Calculation of working time

In the case of workers having more than one contract of work, and for the purposes of implementation of this Directive, the worker's working time shall be the sum of the periods of time worked under each of the contracts."

Amendment 12
ARTICLE 1, POINT 2 B (new)
Article 13, paragraph 1 a (new) (Directive 2003/88/EC)

2b. The following paragraph 1a shall be added to Article 13:

"Member States shall take the necessary measures, by law, regulation or other appropriate provision, to encourage employers, in organising work according to a certain pattern, to take account of the needs of workers to reconcile work with family life. Member States shall, in particular, take the necessary measures to ensure that:

- employers inform workers well in advance of any change in the working time pattern, 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."

Amendment 13

ARTICLE 1, POINT 3

Article 16, point (b), subparagraph 2 (Directive 2003/88/EC)

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.

deleted

Amendment 14
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) *The introductory part of paragraph (1), shall be replaced as follows:*

"1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Articles 3 to 6, 8 and 16, a) and c) when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, in the case of:"

Amendment 15
ARTICLE 1, POINT 4, POINT A A (new)
Article 17, paragraph 1, point (a) (Directive 2003/88/EC)

(aa) In paragraph 1, point (a) shall be replaced by the following:

"(a) chief executive officers (or persons in comparable positions), senior managers directly subordinated to them and persons who are directly appointed by the board of directors,"

Amendment 16
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 *following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the two sides of industry*".

Amendment 17
ARTICLE 1, POINT 4, POINT D, POINT I
Article 17, paragraph 5, subparagraph 1 (Directive 2003/88/EC)

In accordance with paragraph 2 of this Article, derogations may be made from Article 6 in the case of doctors in training, in accordance with the provisions set out in subparagraphs 2 to 7.

In accordance with paragraph 2 of this Article, derogations may be made from Article 6 in the case of doctors in training, in accordance with the provisions set out in subparagraphs 2 to 6.

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

5. 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*".

5. 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 *following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the two sides of industry*".

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

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.

The option to derogate from Article 16 may be used to extend the reference period up to a maximum of 12 months, for objective or technical reasons, or reasons concerning the organisation of work, subject to compliance with the general principles relating to the protection of the safety and health of workers:

a) in cases where workers are covered by collective agreements or other agreements between the two sides of industry as provided for in Article 18; or

b) by means of law or regulation 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.

Amendment 21
ARTICLE 1, POINT 8, POINT B
Article 22, paragraph 1 a, point a (Directive 2003/88/EC)

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.

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, **on the basis of order book changes**, he has first obtained the worker's *written* agreement to perform such work. This agreement shall be valid for a period not exceeding **six months**, 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.

Amendment 20
ARTICLE 1, POINT 8, POINT B A (new)
Article 22, paragraph 3 a (new) (Directive 2003/88/EC)

(ba) the following paragraph 3a shall be added:

"3a. This Article shall be repealed 36 months after the entry into force of Directive 2005/.../EC."

Amendment 22
ARTICLE 1, POINT 8 A (new)
Article 24, paragraph 3 (Directive 2003/88/EC)

8a. Article 24, paragraph 3, shall be replaced as follows:

"3. Every five years, with effect from 23 November 1996, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the implementation of this Directive, including, where necessary, appropriate proposals for its amendment in order to take account of developments in health and safety at the work place and the reconciliation of family and working life."

Amendment 23
ARTICLE 1, POINT 9
Article 24 a (Directive 2003/88/EC)

9. The following Article 24a is added: ***deleted***

"Article 24a

Application report

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)."

Amendment 24
ARTICLE 3, PARAGRAPH 2 A (new)

Member States shall ensure that any agreements that have been made by workers in accordance with the original wording of Article 22(1)(a) of Directive 2003/88/EC and are still valid at the date of implementation mentioned in the first paragraph of this Article shall remain valid for a period not exceeding one year from that date.

Amendment 25
ARTICLE 5

This Directive is addressed to the Member States.

This Directive is addressed to the Member States. *Upon publication, a copy of this Directive shall be sent to the governments and parliaments of the candidate countries.*

