The Commission, however, would like to remind that the Union has developed throughout the years a comprehensive policy for dealing adequately with the social consequences of corporate restructuring. As a result of that on-going policy, every restructuring operation must be preceded by effective information and consultation of employees' representatives with the aim of avoiding or attenuating its social impact, in accordance with Community Directives on 'Collective Redundancies' (1), 'Transfers of Undertakings' (2), 'European Works Councils' (3) and 'Information and Consultation' (4).

In particular, Directive 98/59/EC concerning collective redundancies provides for information and consultation with the workers' representatives in cases where the employer is contemplating such redundancies. These consultations should be carried out in good time with a view to reaching agreement and cover, at least, ways and means of avoiding collective redundancies or reducing the number of workers affected as well as of mitigating the consequences by recourse to accompanying social measures. These measures aim, inter alia, at aid for redeploying or retraining workers made redundant.

More generally, the Commission advocates the idea that, when deciding on their relocation, enterprises should always take into account the effects that those decisions could have on their employees as well as on the social and regional context. This has recently been underlined in the Commission Communication concerning Corporate Social Responsibility (CSR) A business contribution to Sustainable Development (5).

Furthermore, the Commission invited the European social partners to engage in a dialogue on anticipating and managing change with a view to apply a dynamic approach to the social aspects of corporate restructuring. The social partners agreed to incorporate this issue in their pluriannual work program 2003-2004. The Commission very much hopes that their joint work in this field results in a Community framework which may help companies and their workers to address adequately the social dimension of corporate restructuring.


(2003/C 280 E/195) WRITTEN QUESTION E-1715/03 by Pasqualina Napoletano (PSE) to the Commission

(23 May 2003)

Subject: Transposition into national law and application of Directive 93/104/EC

Council Directive No 93/104/EC (1) concerning certain aspects of the organisation of working time, along with its amending Directive 2000/34/EC (2), have recently been transposed into Italian national law through Decree Law No 66 of 14 April 2003, published in Official Gazette of the Italian Republic No 87 of 14 April 2003. It appears that in Italy the category 'caretakers and janitors' is not considered to fall within the scope of the EU directive on working time. This is because Royal Decree No 692 of 15 March 1923, which is still in force, states that discontinuous and passive types of work do not qualify as sustained and uninterrupted employment.

Today, 80 years later, that contention seems meaningless in the light of the fact that the duties that caretakers and janitors are expected to perform almost always call for constant attentiveness. This theory is supported by recent Court of Justice case-law concerning doctors in Spain, which treats periods of availability as working time when such periods presuppose physical and mental vigilance on the part of a worker present at the workplace.
The fact is, however, that in Italy certain categories of caretaker and janitor work up to 59 hours a week, and up to a maximum of 11 consecutive hours per day. Moreover, it is often the case that the relevant national collective agreements contain no reference to length of work. This too runs contrary to the directive, which establishes that all workers have the right to know their working time.

The aim of the European working time directives is to implement the Charter of Fundamental Social Rights of Workers, and they have as their legal basis the articles of the Treaty relating to the improvement of the health and safety of all workers.

The European Parliament has already highlighted the problems associated with the definition of working time provided in Directive 93/104/EEC in its report A5-0010/2002 (3), which was adopted in February 2002, and which also emphasised that reference to national laws could give rise to grave risks of distortions and disparities between Member States.

Does the Commission consider the exclusion of caretakers and janitors from the scope of this directive to be justified?

How will it remedy the problems that have been encountered with regard to the definition of working time when undertaking its forthcoming, eagerly-awaited and urgent review of Directive 93/104/EC?


Answer given by Mrs Diamantopoulou on behalf of the Commission

(23 June 2003)

Directive 93/104/EC(1) lays down minimum safety and health requirements for the organisation of working time. According to Article 1(3) of this Directive, it applies to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Article 17 of this Directive, with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training. The sectors and activities excluded from Directive 93/104/EC are now covered by Directive 2000/34/EC(2), which Member States must transpose into national law by 1 August 2003 (1 August 2004 for doctors in training).

The exclusion from the scope of the Directive of workers other than those expressly mentioned in the Article above would not be in compliance with the Directive.

The new Italian legislation(3) is currently being examined in order to determine whether it complies with the Directive.

With regard to the second question, the Commission intends to address the definition of working time, particularly in the light of the case-law of the Court of Justice, in the communication on working time which will be adopted in the course of this year.

(3) Forwarded to the Commission by letter dated 14 April 2003.

WRITTEN QUESTION E-1727/03
by Antonio Di Pietro (ELDR) to the Commission

(23 May 2003)

Subject: The Merloni Law on public procurement

In Italy, Law No 166 of 1 August 2002 on public procurement — the so-called 'Merloni Law' — abolished the principle whereby, even in the case of contracts of under the threshold value of EUR 40 000 (the limit