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The Commission is, however, committed to the aims of its Better Regulation initiative and the need for proposals to be underpinned by a comprehensive assessment of the impacts and benefits. In this regard and in accordance with the Treaty establishing the European Community, the Commission will continue to evaluate the need to bring forward new legislative proposals but reserves its right to decide if and when it would be appropriate to present any such proposal.

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## Organisation of working time \*\*\*II

P6\_TA(2008)0615

**European Parliament legislative resolution of 17 December 2008 on the Council common position for adopting a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time (10597/2/2008 — C6-0324/2008 — 2004/0209(COD))**

(2010/C 45 E/47)

(Codecision procedure: second reading)

*The European Parliament,*

- having regard to the Council common position (10597/2/2008 — C6-0324/2008),
  - having regard to its position at first reading <sup>(1)</sup> on the Commission proposal to Parliament and the Council (COM(2004)0607),
  - having regard to the amended Commission proposal (COM(2005)0246),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 62 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A6-0440/2008),
1. Approves the common position as amended;
  2. Instructs its President to forward its position to the Council and the Commission.

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<sup>(1)</sup> OJ C 92 E, 20.4.2006, p. 292.

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## P6\_TC2-COD(2004)0209

**Position of the European Parliament adopted at second reading on 17 December 2008 with a view to the adoption Directive 2009/.../EC of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission,

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Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) Article 137 of the Treaty provides that the Community is to support and complement the activities of the Member States with a view to improving the working environment to protect workers' health and safety. Directives adopted on the basis of the aforementioned Article are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
- (2) Directive 2003/88/EC of the European Parliament and of the Council <sup>(4)</sup> establishes minimum requirements concerning the organisation of working time, inter alia, in respect of daily and weekly rest periods, breaks, maximum weekly working time, annual leave and certain aspects of night work, shift work and patterns of work.
- (3) The third paragraph of Article 19 and the second subparagraph of Article 22(1) of Directive 2003/88/EC provide for a review before 23 November 2003.
- (4) More than ten years after the adoption of Council Directive 93/104/EC <sup>(5)</sup>, the initial Directive concerning the organisation of working time, it has become necessary to take into consideration new developments and demands from both employers and workers and provide the resources to meet the growth and employment objectives laid down by the European Council of 22 and 23 March 2005 in the context of the Lisbon strategy.
- (5) The reconciliation of work and family life is also an essential element for achieving the objectives set by the European Union in the Lisbon strategy, particularly for increasing the rate of employment amongst women. The aim is not only to create a more satisfactory working environment, but also to respond better to workers' demands, in particular those with family responsibilities. A number of amendments contained in this Directive are intended to permit greater compatibility between work and family life.
- (6) In this context, the Member States should encourage the social partners to conclude agreements at the appropriate level for improving the reconciliation of work and family life.
- (7) **It is necessary** to strengthen the protection of *the safety and health of workers in view of the challenge of new forms of organisation of working time, to introduce working-time models which provide opportunities for life-long learning for workers*, 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.
- (8) **According to the case law of the Court of Justice of the European Communities, the characteristic feature of the concept of 'working time' is the requirement to be present at a place determined by the employer and available to the employer in order to be able to provide services immediately, as necessary.**

<sup>(1)</sup> OJ C 267, 27.10.2005, p. 16.

<sup>(2)</sup> OJ C 231, 20.9.2005, p. 69.

<sup>(3)</sup> Position of the European Parliament of 11 May 2005 (OJ C 92 E, 20.4.2006, p. 292), Council Common Position of 15 September 2008 (OJ C 254 E, 7.10.2008, p. 26) and Position of the European Parliament of 17 December 2008.

<sup>(4)</sup> OJ L 299, 18.11.2003, p. 9.

<sup>(5)</sup> OJ L 307, 13.12.1993, p. 18. **||**

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- (9) ***In circumstances where workers have not been afforded periods of rest, compensatory rest periods must be granted following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the social partners.***
- (10) The provisions on the reference period for maximum weekly working time must also be re-examined, with the objective of adapting them to the needs of employers and workers, subject to safeguards for the protection of *the safety and health of workers*.
- (11) Whenever the duration of the employment contract is less than one year, the reference period should not be longer than the duration of the employment contract.
- (12) The experience gained in the application of Article 22(1) of Directive 2003/88/EC shows that the purely individual **final** decision not to be bound by Article 6 thereof **is** problematic with regard to the protection of *the safety and health of workers* and the freedom of choice of the worker. ***The derogation provided for in that provision should, therefore, cease to apply.***
- (13) ***It is important that where a worker has more than one employment contract, measures are taken to ensure that the worker's working time is defined as the sum of the periods of time worked under each of the contracts.***
- (14) In accordance with Article 138(2) of the Treaty, the Commission consulted management and labour at Community level on the possible direction of Community action in this field.
- (15) Following *that* consultation, the Commission considered that Community action was advisable and further consulted management and labour on the content of the envisaged proposal, in accordance with Article 138(3) of the Treaty.
- (16) Following *that* second phase of consultation, management and labour at Community level did not inform the Commission of their wish to initiate the process which could lead to the conclusion of an agreement provided for in Article 139 of the Treaty.
- (17) Since the objective of this Directive, namely modernising Community legislation concerning the organisation of working time, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (18) This Directive respects the fundamental rights and complies with the principles recognised by the Charter of Fundamental Rights of the European Union <sup>(1)</sup>. In particular, it is designed to ensure full respect for the right to fair and just working conditions referred to in Article 31 of the Charter, and in particular paragraph 2 thereof, which provides 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'.

(1) OJ C 364, 18.12.2000, p. 1.

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- (19) The implementation of this Directive should maintain the general level of protection afforded to workers as regards *safety and health* at work,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

Directive 2003/88/EC is hereby amended as follows:

1. In Article 2 the following points shall be inserted:

‘1a. “on-call time” means any 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. “workplace” means the place or places where the worker normally carries out his activities or duties and which is determined in accordance with the terms of the employment relationship or contract applicable to the worker;

1c. “inactive part of on-call time” means any period during which the on-call worker is on call within the meaning of point 1a but is not required by his employer to actually carry out his activity or duties;’

2. The following Articles shall be inserted:

#### Article 2a

On-call time

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

**However, inactive parts of on-call time may, by collective agreement or other agreement between the social partners or by means of law or regulation, 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.**

The inactive part of on-call time shall not be taken into account in calculating the daily or weekly rest periods laid down in Articles 3 and 5 respectively.

#### Article 2b

**Calculation of working time**

**Where a worker has more than one employment contract, the worker’s working time shall be the sum of the periods of time worked under each of the contracts.**

#### Article 2c

Reconciliation of work and family life

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

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

- **employers inform workers well in advance of any change in the pattern of work, and**
- **workers have the right to request changes to their hours or patterns of work, and employers are required to consider such requests fairly, having regard to the flexibility needs of employers and workers. An employer may refuse such a request only if the organisational disadvantages for the employer are disproportionately greater than the benefit to the worker.**

(\*) OJ L 80, 23.3.2002, p. 29.'

3. Article 17 shall be amended as follows:

(a) ¶ paragraph 1 **shall be amended as follows:**

(i) *in the introductory part*, the words 'Articles 3 to 6, 8 and 16' shall be replaced by 'Articles 3 to 6, Article 8 and Article 16(a) and (c)';

(ii) **point (a) shall be replaced by the following:**

**'(a) chief executive officers (or persons in comparable positions), senior managers directly subordinate to them and persons who are directly appointed by a board of directors;'**

(b) in paragraph 2, the words 'provided that the workers concerned are afforded equivalent periods of compensatory rest' shall be replaced by 'provided that the workers concerned are afforded equivalent periods of compensatory rest **following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the social partners**';

(c) in paragraph 3, in the introductory sentence, the words 'Articles 3, 4, 5, 8 and 16' shall be replaced by 'Articles 3, 4, 5, 8 and Article 16(a) and (c)';

(d) paragraph 5 shall be amended as follows:

(i) the first subparagraph shall be replaced by the following:

'5. 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 the second to the sixth subparagraphs of this paragraph.'

ii) the last subparagraph shall be deleted.

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

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5. Article 19 shall be replaced by the following:

*'Article 19*

Limitations to derogations from reference periods

▮ By way of derogation from Article 16(b), 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, the reference period to be set at a period not exceeding twelve months:

- (a) by collective agreement or agreement between the social partners, as laid down in Article 18; or
- (b) by legislative or regulatory provision following consultation of the social partners at the appropriate level, **in cases where workers are not covered by collective agreements or other agreements between the social partners, provided that the Member State concerned takes the necessary measures to ensure that the employer:**
- (i) **informs and consults workers or their representatives about the introduction of the proposed pattern of work and alterations thereto;**
- (ii) **takes the necessary measures to prevent or remedy any health and safety risks that may be related to the proposed pattern of work**

In making use of the option pursuant to point (b) of the first paragraph, Member States shall ensure that employers respect their obligations as laid down in Section II of Directive 89/391/EEC.'

6. Article 22 shall be replaced by the following:

*'Article 22*

Miscellaneous provisions

1. Although the general principle is that the maximum weekly working time in the European Union is 48 hours and that in practice it is an exception for workers in the *European Union* to work longer, Member States may decide not to apply Article 6 **during a transitional period ending ... (\*)** provided that they take the necessary measures to ensure the effective protection of the safety and health of workers. Implementation of this option, however, shall be expressly laid down by a collective agreement or an agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.

2. In any event, Member States wishing to make use of this option shall take the necessary measures to ensure that:

- (a) no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article 16(b), unless he has first obtained the worker's agreement to perform such work. This agreement shall be valid for a period not exceeding **six months** and shall be renewable;
- (b) no worker shall be subjected to any detriment by his employer because he is not willing to give his agreement to perform such work or because he has withdrawn his agreement for any reason;

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- (c) an agreement given at:
- (i) the time of the signature of the individual employment contract **or during any probationary period**; or
  - (ii) during the first four weeks of the employment relationship

shall be null and void;



- (d) every worker shall be entitled to withdraw, with immediate effect, his agreement to perform such work during the first six months after *conclusion* of a valid agreement or during and up to three months after the probation period specified in his contract is completed, whichever is longer, by informing his employer in due time in writing that he is doing so. Thereafter, the employer may require the worker to give, in writing, advance notice thereof, which shall not exceed two months in duration;
- (e) the employer keeps up-to-date records of all workers who carry out such work and adequate records for establishing that the provisions of this Directive are complied with;
- (f) the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety *and* health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working time;
- (g) the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to work for more than 48 hours over a period of seven days, calculated as an average for the reference period referred to in Article 16(b), and adequate records for establishing that the provisions of this Directive are complied with.



- (\*) ***36 months after the entry into force of Directive 2009/.../EC of the European Parliament and of the Council [amending Directive 2003/88/EC concerning certain aspects of the organisation of working time].***



7. Article 24 shall be replaced by the following:

*Article 24*

Reports

1. Member States shall communicate to the Commission the texts of the provisions of national law already adopted or being adopted in the field governed by this Directive.
2. Member States shall report to the Commission every five years on the practical implementation of this Directive, indicating the viewpoints of the *social partners*.

The Commission shall inform the European Parliament, the Council, the European Economic and Social Committee and the Advisory Committee on Safety and Health at Work thereof.

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3. Every five years 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 application of this Directive taking into account paragraphs 1 and 2.'

#### Article 2

Member States shall lay down rules on penalties applicable in the event of infringements of national provisions implementing this Directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by ... (\*). Member States shall notify to the Commission any subsequent amendments to those provisions in good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

#### Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (\*), or shall ensure that the social partners introduce the necessary provisions by way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this Directive are being attained. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

#### Article 4

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

#### Article 5

This Directive is addressed to the Member States.

Done at ..., on ...

For the European Parliament  
*The President*

For the Council  
*The President*

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(\*) Three years after the date of entry into force of this Directive.

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