

Wednesday 11 May 2005

***The full use of the budget for fruit and vegetables***

60. Requests that full use of the budget devoted to the Community fruit and vegetable sector be guaranteed and that any saving made as a consequence of the reform should revert to it, making optimum use of the various support measures for producers;

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61. Instructs its President to forward this resolution to the Council and the Commission.

**P6\_TA(2005)0175**

**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) <sup>(1)</sup>,
- 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.

<sup>(1)</sup> Not yet published in OJ.

**P6\_TC1-COD(2004)0209**

**Position of the European Parliament adopted at first reading on 11 May 2005 with a view to the adoption of Directive 2005/.../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*,

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

Wednesday 11 May 2005

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>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

whereas:

- (1) Article 137 of the Treaty *provides* that the Community *is to support and supplement* 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 *that* Article must avoid imposing administrative, financial and legal constraints in such a way as to hold back the creation and development of small and medium-sized undertakings.
- (2) Directive 2003/88/CE of the European Parliament and of the Council of 4 November 2003 *concerning* certain aspects of the organisation of working time <sup>(3)</sup>, *lays down* minimum requirements for the organisation of working time, notably *as regards* 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) Article 19 and Article 22(1) of Directive 2003/88/EC contain clauses requiring re-examination before 23 November 2003.
- (4) More than 10 years after the adoption of the Council Directive 93/104/EC of 23 November 1993 *concerning* certain aspects of the organization of working time <sup>(4)</sup>, 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**.
- (5) The reconciliation of work and family life is an essential element *in enabling* 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 *that the needs of workers, particularly those with family responsibilities, are taken more into account*. Several of the modifications introduced by Directive 2003/88/EC **seek to** allow a better compatibility between work and family life.
- (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.
- (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 lifelong 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**.
- (8) **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**.
- (9) The provisions on the derogations *from* the reference period must also be re-examined, with the objectives **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 the needs of employees**.

<sup>(1)</sup> OJ C ...

<sup>(2)</sup> Position of the European Parliament of 11 May 2005.

<sup>(3)</sup> OJ L 299, 18.11.2003, p. 9.

<sup>(4)</sup> OJ L 307, 13.12.1993, p. 18. Directive repealed by Directive 2003/88/EC.

Wednesday 11 May 2005

- (10) The experience gained in the application of Article 22(1) of Directive 2003/88/EC shows that the individual final decision not to be bound by Article 6 of that 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 Article 22(1) should cease to apply.**
- (11) In accordance with Article 138(2), of the Treaty, the Commission consulted the social partners at Community level on the possible direction of Community action in this field.
- (12) Following this consultation, the Commission considered that Community action was advisable and consulted the social partners at Community level again on the content of the envisaged proposal, in accordance with Article 138(3) of the Treaty.
- (13) On the occasion of this second consultation, the social partners did not inform the Commission of their wish to initiate the process which could lead to the conclusion of an agreement, as provided for in Article 138(4), of the Treaty.
- (14) Since the objective of this Directive, namely the modernisation of Community law on 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 this objective.
- (15) 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).**
- (16) In accordance with the principles of subsidiarity and proportionality, referred to in Article 5 of the Treaty, the objectives of the action envisaged above cannot be achieved adequately by the Member States, insofar as this involves modifying a Community legal act in force,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. In Article 2, the following points are inserted:
  - '1a. 'on-call time' means any 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' means any period of on call time within the meaning of point 1a, in which the worker **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.**

Wednesday 11 May 2005

2. The following Article is inserted:

*'Article 2a*

*On-call 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.'*

3. The following Article 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.'*

4. In Article 13, the following paragraph is added:

*'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 pattern of working time, 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.'*

5. In Article 16, point (b) is replaced by the following:

*'(b) for the application of Article 6 (maximum weekly working time), a reference period not exceeding four months.*

*Whenever the duration of the employment contract is less than four months, 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.'*

6. Article 17 is amended as follows:

- (a) The introductory part of paragraph 1, is replaced by the following:

*'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:'*

- (b) In paragraph 1, point (a) is 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;'*

Wednesday 11 May 2005

- (c) 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**'.
- (d) In paragraph 3, the terms 'Articles 3, 4, 5, 8 and 16' are replaced by 'Articles 3, 4, 5, 8 and 16(a) and (c)'.
- (e) Paragraph 5 is amended as follows:
- (i) The first subparagraph is replaced by the following:
- '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.'
- (ii) The last subparagraph is deleted.

7. 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**'.

8. Article 19 is replaced by the following:

***'An 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.'***

9. The second paragraph of Article 20 is deleted.

10. Article 22 is amended as follows:

(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.

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.'

Wednesday 11 May 2005

(b) The following paragraph is inserted:

'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, **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;
- (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.'

(c) **The following paragraph is added:**

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

11. **Article 24, paragraph 3, is replaced by the following:**

'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.'**

#### Article 2

Member States shall lay down rules on *penalties* applicable in the event of infringements of national provisions enacted under 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 *rules* to the Commission by the date given in Article 3 at the latest and any subsequent amendment *thereto to the Commission* 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

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest, 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 communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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

Wednesday 11 May 2005

**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 that are still valid at the date mentioned in the first paragraph of this Article shall remain valid for a period not exceeding one year from that date.**

Article 4

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

Article 5

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.**

Done at ..., on ...

For the European Parliament  
The President

For the Council  
The President

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