

Organisation of working time

2004/0209(COD) - 18/09/2008 - Commission communication on Council's position

The common position includes a number of aspects which differ from the Commission's amended proposal. In particular, it does not take up several amendments proposed by Parliament, although the Commission's amended proposal had incorporated a significant number of Parliament's proposals.

The main points of divergence between the Commission's amended proposal and the Council common position are as follows:

Application per-worker of the working time limits and rest periods required by the Directive: the Commission considers that, given the need to ensure that the health and safety objectives of the Working Time Directive are fully effective, Member States' legislation should already provide for appropriate measures to ensure that the Directive's limits on average weekly working time and daily and weekly rest are, as far as possible, respected per-worker, in the case of workers working concurrently under two or more employment relationships which come within the scope of the Directive. Despite Parliament's proposed amendment, it was not possible to reach any agreement on including any specific provision that these rules should be applied per-worker. The Commission considers that this issue would be suitable for review separately from the present legislative proposal.

On-call time: under the amended proposal, a distinction is made between 'active' and 'inactive' periods of on-call time at the workplace. The Commission proposed that active periods of on-call time (periods where workers were effectively carrying out their duties in response to a call) would always be considered as working time. Conversely, inactive periods would not be considered as working time unless national law or collective agreements so provided. However, inactive periods could never be counted as rest time. The common position makes no change regarding 'active' on-call time, but would allow 'inactive' periods to be treated either as working time or as rest time, according to national law or to collective agreements.

Reconciliation of work and family life: under the amended proposal, Member States would take the necessary measures to 'ensure' that employers are obliged to examine workers' requests for changes to their working hours, taking account of both sides' needs for flexibility. The common position provides instead that Member States shall 'encourage' employers to examine such requests, subject to additional qualifications. However, the proposed text would still bring an overall improvement in working conditions, since the Directive contains no specific provisions on reconciliation, and the proposed text would also introduce a new obligation for Member States to ensure that employers inform workers in due time of any substantial changes to the organisation of working time.

The future of the 'opt-out': the future of the opt-out was the single most controversial point during the prolonged and difficult Council discussions during the first reading. The amended proposal envisaged that the 'opt-out' would be repealed three years after the proposed Directive entered into force, while stronger protective conditions would also apply in the meantime to workers who agreed to opt out. The common position does not provide for repeal of the opt-out. Instead, it expands the increased protection already proposed by the Commission, to give a **new four-point framework** for the opt-out:

1. more explicit limits;
2. a range of more stringent practical conditions to protect workers;
3. a future review of the opt-out based on detailed national reports;
4. a provision which obliges Member States to choose between using the opt-out and being able to average working time over a longer period (up to 12 months) by legislation.

The Commission's view remains that the opt-out is a derogation from the fundamental principle of a 48-hour maximum working week, which can present risks to workers' health and safety, both in the short and in the long term. For this reason, the Commission has consistently proposed to substantially strengthen the safeguards protecting workers who agree to use the opt-out.

Some of the proposed changes to the treatment of inactive on-call time are expected to ease the difficulties experienced by certain Member States in providing the necessary trained staff either in the short or medium term (due to structural factors, or to labour flows between Member States and to third countries.) The review which is provided for under new Article 24a will allow the Commission to take stock of the impact of these changes on Member States' actual use of the opt-out, and will also provide much more detailed information on the actual use of the opt-out than is presently available.

Maximum working time, for workers who opt out of the 48-hour limit: the Commission considered that the lack of a specific upper limit for opted-out workers posed a particular risk of abuse. The amended proposal would set a new explicit limit for opted-out workers, of 55 hours in any week, unless collective agreements or agreements between the social partners provided otherwise. The common position takes a different approach. The limit for opted-out workers would be 60 hours (on average over 3 months) unless collective agreements or agreements between the social partners provide otherwise; or 65 hours (on average over 3 months), if inactive periods of on-call time were considered as working time and if no collective agreements applied. The Commission recognises that the limits proposed by the common position do represent an advance on the present lack of any specific upper limit for workers who agree to opt out. The Commission also considers it justified to allow a slightly higher limit where inactive on-call time is recognised as working time.

Conclusion: the Commission is aware that the common position differs in some respects from its amended proposal. In some instances, the changes reinforce the level of protection provided to workers. The Commission believes that the present situation regarding on-call time and compensatory rest still urgently requires clarification through legislative change. The Commission is also very conscious of the advantages for the overall protection of workers which flow from the Council's decision to link a political agreement on this amending proposal with a political agreement on the proposed new Directive on temporary agency work ([COD/2002/0072](#)). This approach has allowed two key proposals to finally move into second reading, after a very long period of political blockage.

Overall, in view of the strongly divergent positions of Member States within the Council during the very protracted and difficult first reading on amendment of the Working Time Directive (almost four years), the Commission has supported the overall agreement, having regard to the urgent need to clarify the legal situation and thus to allow more coherent application of the Directive across all Member States.