

Organisation of working time

2004/0209(COD) - 16/12/2008

The French Presidency briefed Ministers on the main results of the Parliament's second reading which took place on 17 December 2008.

With a conciliation procedure in prospect, the Presidency stressed the importance of reaching

agreement with Parliament swiftly, for reasons of both legal certainty and social protection, since the Directive currently in force allows Member States to authorise a working week of up to 78 hours.

The main differences between Parliament's second reading and the common position adopted by the Council on 15 September 2008 relate to on-call time, the non-participation clause and compensatory rest.

- With regard to **on-call time**, the Council draws a distinction between active on-call time and the inactive part of on-call time. The inactive part of on-call time (any period during which the worker has the obligation to be available at the workplace but is not required by his employer to actually carry out his activity or duties) is not regarded by the Council to be part of working time, unless national law or, in accordance with national law and/or practice, a collective agreement or an agreement between the social partners provides otherwise.
- With regard to **weekly working time**, the Council argues for a **standard limit of 48 hours a week**, including overtime and active on-call time, calculated as over a reference period. Member States may, however, decide to allow this limit to be exceeded (non-participation clause) provided that they ensure the effective protection of the health and safety of workers and subject to the express, free and informed consent of the worker concerned. Use of the clause must be subject to appropriate safeguards and close monitoring. A recital refers to the Charter of Fundamental Rights and in particular every worker's right to a limitation of their maximum working hours. The special ceiling for workers who choose not to participate is in general 60 hours, calculated as an average over a period of three months (which may be exceeded under a collective agreement) or 65 hours, calculated as an average over a period of three months (only when the inactive part of on-call time is regarded as working time and in the absence of a collective agreement).
- With regard to **compensatory rest**, the Council provides that where there are derogations to the provisions applicable to daily rest periods, breaks, weekly rest periods, night work and reference periods, compensating rest periods must be granted within a reasonable period, to be determined by national legislation or a collective agreement or an agreement concluded between the social partners.