Organisation of working time: state of implementation of Directive 93/104/EC. Report

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PURPOSE : to report on the state of implementation of Council Directive 93/104/EC concerning certain aspects of the organisation of working time. CONTENT : this report gives a general overview of the way in which Member States have implemented the abovementioned Council Directive. In the majority of Member States the implementation has taken place by a great number of different legislative and/or administrative acts and, as the case may be, collective agreements. Consequently, in this report it is not possible to provide an exhaustive detailed examination of all national implementation measures. The report will provide a general analysis of the situation in Member States. The deadline for implementation of the Working Time Directive was set at 23 November 1996 at the latest. However, only Germany, Sweden, Finland, Spain and the Netherlands notified the Commission of their national measures of implementation by the date of implementation. Italy and France are yet to notify all of their national implementing measures offically to the Commission. The analysis of measures taken by the latter Member States is, therefore, not based on first hand information from the authorities of the Member States. The report concludes that the general level of implementation of the Working Time Directive in Member States is relatively good. However, with prejudice to the more detailed comments presented under the preceding chapters, the Commission would like to draw attention to some general issues. First, some Member States have entirely excluded categories of workers, who do not fall within the scope of the exclusions allowed by Article 3(1) of the Working Time Directive or Article 2 of Directive 89/391/EC. The fact that some of these categories fall within the scope of Article 17(1) of the Working Time Directive does not permit a total exclusion of these workers. Furthermore, in some cases the scope of the national measures in respect of the derogation under Article 17(1) of the Directive may have been excluded beyond the aim of the derogation. Second, in some Member States, due to the structure of the national legislation on the limits on working time, which differentiates between regular working times and overtime without setting an absolute limit over a given reference period, there is a risk that the average weekly working time of 48 hours is not always respected. This risk is particularly acute in situations where a major proportion of the overtime allowed is worked during a short reference period. Third, in some Member States there is a qualifying period for the entitlement to annual leave. Article 7 of the Directive lays down a right to 4 weeks annual leave for all workers which, in appropriate cases, may be given on a pro rata temporis basis. Furthermore, in some Member States, due to the detailed rules for the entitlement to annual leave,workers may not be able to take any leave during the first year of their employment. Fourth, in a number of Member States there are important shortcomings in respect of the regulation of night work. In particular, in some Member States there is no legislation on night work and in some Member States the limits on night time work do not include overtime. Lastly, in some Member States the implementaiton of the Directive has been carried out in a way which makes it doubtful as to whether the transposal guarantees that the Directive has been incorporated into domestic law in a sufficiently clear and precise manner and in such a way as to ensure the proper application of the Directive.