

Revision of Directive 93/104/EEC on the organisation of working time

2003/2165(INI) - 30/12/2003 - Document attached to the procedure

PURPOSE : to present a report on the application of Directive 93/104/EC on the certain aspects of the organisation of working time and the possible re-exam of the Directive. **CONTENT** : Directive 93/104/EC of 23 November 1993 lays down minimum requirements with regard to the organisation of working time, with the aim of ensuring a better level of safety and health protection for workers. In order to ensure the protection of workers against harmful effects for their health and safety resulting from working excessive hours, insufficient rest or irregular organisation of work, the Directive lays down in particular: - a minimum rest period of 11 consecutive hours for each 24-hour period; - a rest break where the working day is longer than six hours; - a minimum rest period of one day per week; - maximum weekly working hours of 48 hours on average, including overtime; - four weeks of paid annual leave; - an average of no more than eight hours of work at night in any 24-hour period. The Member States were required to transpose the Directive by 23 November 1996 at the latest. Transposal has been concluded in all the Member States. Further information on the transposal of the Directive may be obtained by consulting the report published in 2000. The scope of Directive 93/104/EC excluded air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and doctors in training. On 22 June 2000, the European Parliament and the Council adopted Directive 2000/34/EC amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive. Directive 2000/34/EC was to be transposed by the Member States by 1 August 2003 (1 August 2004 with regard to doctors in training). The aim of this communication is to analyse the application of the Directive 93/104/EC as amended by Directive 2000/34/EC and more specifically two provisions which allow for their review prior to the expiry of a seven-year period reckoned from the deadline for transposal by the Member States, i.e. prior to 23 November 2003. These provisions concern the derogations from the reference period for the application of Article 6 (maximum working week) and the option of not applying Article 6 if the worker agrees to carry out such work (generally known, and hereinafter referred to as, opt-out). The aim of this communication is therefore threefold: 1) it aims to evaluate the application of the two provisions subject to review; 2) it aims to analyse the impact of the case law of the Court concerning the definition of working time and the qualification of time on call, as well as new developments aimed at improving compatibility between working and family life; 3) it aims to consult the European Parliament and the Council, but also the European Economic and Social Committee, the Committee of the Regions and the social partners, on a possible revision of the text. The report focuses on the directive's current opt-outs (the use of Article 18(1)(B)(I)), which allow individuals to waive their working time rights, and the definition and calculation of working time. Recent European Court of Justice rulings have led to more Member States turning to use of the opt-out. It has to be noted that the main characteristics of the system governing working time in the United Kingdom have remained unchanged despite the entry into force of the Directive, mainly as a result of using the opt-out. According to available figures, approximately 4 million people, or 16% of the workforce, currently work more than 48 hours per week, although there were only 3.3 million (or 15%) at the beginning of the 1990s. It also appears that the number of people working over 55 hours per week has increased, and now stands at 1.5 million. In fact, the United Kingdom is the only Member State where weekly working time has increased over the last decade. France, Germany, Netherlands, Spain and Luxembourg are preparing or have passed legislation to make restricted use of the opt-out, in certain sectors. The Commission's report finds that not all the guarantees laid down within the Directive are being provided. It is concerned, for example, that workers are frequently asked to sign the opt-out agreement at the same time as signing their employment contract, which acts a constraint to freedom of choice. The communication lays down the criteria which the Commission feels must be met: first and foremost, the approved approach should: - give workers a high level of health and safety protection in respect of working time; - give firms and Member States more flexibility in the way they manage working time; - make it easier to reconcile work and family life; - avoid

imposing unreasonable constraints on firms, particularly small and medium-sized businesses. The Commission would like the addressees of this communication to express their opinion on the need to revise the current text or introduce other initiatives, not necessarily legislative. Five main issues emerge which need to be addressed: - the first refers to the reference periods; - the second relates to the Court of Justice's interpretation of the concept of working time in the SIMAP and JAEGER cases; - the third concerns the conditions of application of article 18.1 b) i) (opt out); - the fourth, covers measures aiming at improving the reconciliation between work and family life; - the fifth whether an interrelated approach to these issues would allow for a balanced solution capable of meeting the criteria set above. The deadline for responses to the consultation is 31 March 2004.