

Organisation of working time

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The Council made progress on a number of key issues of the proposal for a Directive of the European Parliament and the Council amending Directive 2003/88/03 concerning certain aspects of the organisation of working time, presented by the Commission in September 2004.

It is recalled that the Commission proposal is essentially aimed at:

a) introducing legal certainty, following the recent European Court of Justice judgments concerning the definition of "working time", by introducing the concepts of "on-call time" and "inactive part of on-call time" into the Directive.

b) reviewing the provisions of Directive 2003/88/EC concerning:

- the possibility of and conditions for derogating from the reference period for the application of the maximum weekly working time;

- the possibility of and conditions for derogating from the maximum weekly working time, if the worker so agrees ("opt-out provision").

The first issue concerns the possibility of extension of the reference period for the calculation of the maximum working week (48 hours) from 4 to 12 months.

While the standard reference period should remain 4 months, as in the current Directive, the Council agreed on a provisional basis on an option being given to the Member States to extend it to 12 months on the grounds of objective or technical reasons or reasons concerning the organisation of work, subject to compliance with the general principles of protection and health of workers and provided there is consultation of the social partners concerned.

The second issue on which the Council made progress concerns "on-call time", i.e. the period during which a worker has to be available at the workplace in order to be in a position to carry out his activity or duties, at the employer's request.

The Council had to take account of the European Court of Justice's judgments in the SIMAP and Jaeger cases in which the Court ruled that (doctors') periods of actual inactivity when on-call must be regarded as work within the meaning of Directive 2003/88/EC.

Against this background, the Council reached a broad measure of agreement, on the basis of compromise texts suggested by the Presidency, on three new definitions to be inserted into the Directive :

- "on-call time",

- "inactive part of on-call time" (i.e. a period during which the worker is on-call, but not required by his employer to carry out his activity or duties) and

- "workplace" –, as well as a new Article, which would provide that the period during which the worker carries out his activity or duties during on-call time will have to be regarded as working time, while the inactive part of on-call time should not be regarded as working time, unless national law, a collective agreement or an agreement between the two sides of industry, decides otherwise.

The Council also reached a broad measure of agreement on a third issue, concerning "compensatory rest", which has to be granted in cases where a derogation is made to the Directive's provisions on daily or weekly rest. It examined a Presidency suggestion according to which compensatory rest should be afforded within 72 hours or within a reasonable period (with a maximum of 7 days) to be determined by national laws, regulations or administrative provisions or collective agreements or agreements between the two sides of industry.

The Council also held an in-depth policy debate on the so-called "opt-out provision", i.e. the possibility to derogate from Article 6 of Directive 2003/88/EC (which limits the average weekly working time to 48 hours), on the basis of compromise proposals put forward by the Presidency.

Although a significant majority of Member States considered the Presidency suggestions to be a good basis for discussion, agreement on this issue could not be reached.

It is recalled that the Commission proposal envisaged amending an Article of the Directive, with a view to giving precedence to collective agreements and to limiting the individual opt-out to cases where there is no collective agreement in force and no workers' representation empowered to conclude such an agreement, such an individual opt-out being moreover subject to strict conditions. In the light of this debate, the Council instructed the Permanent Representatives Committee to continue its work on this proposal, pending receipt of the European Parliament's opinion, with a view to an agreement being reached at the earliest possible date.