

# EUROPEAN PARLIAMENT

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Session document

**A6-0440/2008**

11.11.2008

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time (10597/2/2008 – C6-0324/2008 – 2004/0209(COD))

Committee on Employment and Social Affairs

Rapporteur: Alejandro Cercas

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Council common position for adopting a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time (10597/2/2008 – C6-0324/2008 – 2004/0209(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (10597/2/2008 – C6-0324/2008),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2004)0607),
  - having regard to the amended Commission proposal (COM(2005)0246),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 62 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A6-0440/2008),
1. Approves the common position as amended;
  2. Instructs its President to forward its position to the Council and Commission.

### **Amendment 1**

**Council common position – amending act  
Recital 7**

*Council common position*

(7) ***There is a need*** to strengthen the protection of workers' health and safety ***and for greater flexibility in organising*** working time, ***particularly with regard to on call time and, more specifically, inactive periods during on-call time,*** and also to strike a new balance between ***reconciling*** work and family life on the one hand and more flexible organisation of working time on the other.

*Amendment*

(7) ***It is necessary*** to strengthen the protection of workers' health and safety ***in view of the challenge of new forms of organisation of*** working time, ***to introduce working-time models which provide opportunities for life-long learning for employees,*** and also to strike a new balance between ***the reconciliation of*** work and family life on the one hand, and more flexible organisation of working time on

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<sup>1</sup> OJ C 92 E, 20.4.2006, p. 292.

the other.

## **Amendment 2**

### **Council common position – amending act Recital 7 a (new)**

*Council common position*

*Amendment*

***(7a) According to the case-law of the Court of Justice of the European Communities, the characteristic features of the concept of 'working time' are the requirements to be present at a place determined by the employer and available to the employer in order to be able to provide services immediately, as necessary.***

*(See P6\_TA(2005)0175 of 11.5.2005, Recital 8.)*

## **Amendment 3**

### **Council common position – amending act Recital 8**

*Council common position*

*Amendment*

***(8) Workers should be afforded periods of compensatory rest in circumstances where rest periods are not granted. The determination of the length of the reasonable period within which equivalent compensatory rest is granted to workers should be left to the Member States, taking into account the need to ensure the safety and health of the workers concerned and the principle of proportionality.***

***(8) In circumstances where workers have not been afforded periods of rest, compensatory rest periods must be granted following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the two sides of industry.***

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraphs 6 and 7.)*

#### Amendment 4

##### Council common position – amending act Recital 11

###### *Council common position*

(11) The experience gained in the application of Article 22(1) of Directive 2003/88/EC shows that the purely individual decision not to be bound by Article 6 thereof *can be* problematic with regard to the protection of workers' health and safety and the freedom of choice of the worker.

###### *Amendment*

(11) The experience gained in the application of Article 22(1) of Directive 2003/88/EC shows that the purely individual **final** decision not to be bound by Article 6 thereof **is** problematic with regard to the protection of workers' health and safety and the freedom of choice of the worker. **Therefore, the derogation provided for in that provision should cease to apply.**

*(See P6\_TA(2005)0175 of 11.5.2005, Recital 10.)*

#### Amendment 5

##### Council common position – amending act Recital 12

###### *Council common position*

***(12) The option provided for in Article 22(1) is a derogation from the principle of a 48-hour maximum working week, calculated as an average over a reference period. It is subject to the effective protection of workers' health and safety, and to the express, free and informed consent of the worker concerned. Its use must be subject to appropriate safeguards to ensure that these conditions are complied with, and to close monitoring.***

###### *Amendment*

***deleted***

#### Amendment 6

##### Council common position – amending act Recital 13

###### *Council common position*

***(13) Before applying the option provided***

###### *Amendment*

***deleted***

*in Article 22(1), consideration should be given to whether the longest reference period or other flexibility provisions provided by Directive 2003/88/EC do not guarantee the flexibility needed.*

#### **Amendment 7**

##### **Council common position – amending act Recital 14**

*Council common position*

*Amendment*

*(14) In order to avoid risks to the health and safety of workers, the cumulative use in a Member State of both the flexible reference period provided by point (b) of the first paragraph of Article 19 and the option under Article 22(1) is not possible.*

*deleted*

#### **Amendment 8**

##### **Council common position – amending act Recital 16 a (new)**

*Council common position*

*Amendment*

*(16a) It is important that where a worker has more than one contract of work, measures be taken to ensure that the worker's working time is defined as the sum of the periods of time worked under each of the contracts.*

#### *Justification*

*If this directive is to be effective in protecting worker's health, it is vital that the working time is calculated per person and not per contract as people may have more than one contract.*

#### **Amendment 9**

##### **Council common position – amending act Article 1 – point 2 Directive 2003/88/EC Article 2a**



***The inactive part of on-call time shall not be regarded as 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.***

***The inactive part of on-call time may be calculated on the basis of an average number of hours or a proportion of on-call time, taking account of experience in the sector concerned, by collective agreement or agreement between the social partners or by national legislation following consultation of the social partners.***

The inactive part of on-call time shall not be taken into account in calculating the daily or weekly rest periods laid down in Articles 3 and 5 respectively, ***unless otherwise provided for:***

***(a) in a collective agreement or an agreement between the social partners;***

***or***

***(b) by means of national legislation following consultation of the social partners.***

***The period during which the worker actually carries out his activity or duties during on-call time shall always be regarded as working time.***

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 2.)*

*Justification*

*As co-legislators, the Council and Parliament must abide by the Court of Justice case and respect the dignity of the work of persons who are on call.*

**Amendment 10**

**Council common position – amending act**

**Article 1 – point 2**

Directive 2003/88/EC

Article 2a a (new)

*Council common position*

*Amendment*

**Article 2aa**

**Calculation of working time**

***In the case of workers with more than one contract of work, and for the purposes of the implementation of this Directive, the worker's working time shall be the sum of the periods of time worked under each of the contracts.***

*Justification*

*This Directive is a health and safety directive. To protect worker's health, it is important, that the working time calculation is done per person and not per contract.*

**Amendment 11**

**Council common position – amending act**

**Article 1 – point 2**

Directive 2003/88/EC

Article 2 b

*Council common position*

*Amendment*

The Member States shall encourage the social partners at the appropriate level, without prejudice to their autonomy, to conclude agreements aimed at improving the reconciliation of work and family life.

The Member States shall ensure, without prejudice to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and in consultation with the social partners, that ***employers inform workers in due time of any substantial changes in the pattern or organisation of their working time.***

***Taking into account workers' needs for***

The Member States shall encourage the social partners at the appropriate level, without prejudice to their autonomy, to conclude agreements aimed at improving the reconciliation of work and family life.

The Member States shall ensure, without prejudice to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and in consultation with the social partners, that:

***- employers inform workers well in***

*flexibility in their working hours and patterns, the Member States shall, in accordance with national practices, also encourage employers to examine requests for changes to such working hours and patterns, subject to business needs, and to both employers' and workers' needs for flexibility.*

*advance of any change in the pattern of working time, and*

*- workers have the right to request changes to their hours and patterns of work, and that employers have the obligation to consider such requests fairly, having regard to the flexibility needs of employers and employees. An employer may refuse such a request only if the organisational disadvantages for the employer are disproportionately greater than the benefit to the worker.*

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 4.)*

*Justification*

*To ensure that the reference to reconciling work and family life is not empty rhetoric.*

**Amendment 12**

**Council common position – amending act**

**Article 1 – point 3 – point a a (new)**

Directive 2003/88/EC

Article 17 – paragraph 1 – point a

*Council common position*

*Amendment*

***(aa) In paragraph 1, point (a) shall be replaced by the following:***

***"(a) chief executive officers (or persons in comparable positions), senior managers directly subordinate to them and persons who are directly appointed by a board of directors;"***

*Justification*

*Derogations to the directive should be limited to safeguard its health and safety principles, which should apply regardless of the position of the concerned persons. Fatigue and other symptoms related to overworking apply to everyone regardless of titles and endanger both*

*safety and health.*

### **Amendment 13**

#### **Council common position – amending act**

##### **Article 1 – point 3 - point b**

Directive 2003/88/EC

Article 17 – paragraph 2

#### *Council common position*

(b) in paragraph 2, the words "provided that the workers concerned are afforded equivalent periods of compensatory rest" shall be replaced by "provided that the workers concerned are afforded equivalent periods of compensatory rest ***within a reasonable period, to be determined by national legislation or a collective agreement or an agreement concluded between the social partners***";

#### *Amendment*

(b) in paragraph 2, the words "provided that the workers concerned are afforded equivalent periods of compensatory rest" shall be replaced by "provided that the workers concerned are afforded equivalent periods of compensatory rest ***following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the two sides of industry***";

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 6.)*

#### *Justification*

*Common sense and worker health and safety require compensatory rest to follow periods of time spent on duty, as indicated by the Court of Justice.*

### **Amendment 14**

#### **Council common position – amending act**

##### **Article 1 – point 4**

Directive 2003/88/EC

Article 18

#### *Council common position*

In Article 18, in the third paragraph, the words "on condition that equivalent compensating rest periods are granted to the workers concerned" shall be replaced by "on condition that equivalent compensating rest periods are granted to the workers concerned ***within a reasonable period, to be determined by national legislation or a collective agreement or an agreement concluded between the social***

#### *Amendment*

In Article 18, in the third paragraph, the words "on condition that equivalent compensating rest periods are granted to the workers concerned" shall be replaced by "on condition that equivalent compensating rest periods are granted to the workers concerned ***following periods of time spent on duty, in accordance with the relevant law, collective agreement or other agreement between the two sides of***

*partners"*.

*industry"*.

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 7.)*

*Justification*

*Common sense and worker health and safety require compensatory rest to follow periods of time spent on duty, as indicated by the Court of Justice.*

**Amendment 15**

**Council common position – amending act**

**Article 1 – point 5**

Directive 2003/88/EC

Article 19 – paragraph 1 - point b

*Council common position*

*Amendment*

(b) by legislative or regulatory provision following consultation of the social partners at the appropriate level.

(b) by legislative or regulatory provision following consultation of the social partners at the appropriate level, ***in cases where workers are not covered by collective agreements or other agreements between the two sides of industry, provided that the Member State concerned takes the necessary measures to ensure that:***

***- the employer informs and consults with workers and/or their representatives about the introduction of the proposed working time pattern and alterations thereto;***

***- the employer takes the necessary measures to prevent and/or remedy any health and safety risks that may be related to the proposed working time pattern.***

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 8.)*

*Justification*

*To strike a balance between employers' and workers' flexibility and safety needs.*

## Amendment 16

### Council common position – amending act

#### Article 1 – point 6

Directive 2003/88/EC

Article 22 – paragraph 1

#### *Council common position*

1. Although the general principle is that the maximum weekly working time in the European Union is 48 hours and that in practice it is an exception for workers in the Union to work longer, Member States may decide not to apply Article 6 provided that they take the necessary measures to ensure the effective protection of the safety and health of workers. Implementation of this option, however, shall be expressly laid down by a collective agreement or an agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.

#### *Amendment*

1. Although the general principle is that the maximum weekly working time in the European Union is 48 hours and that in practice it is an exception for workers in the Union to work longer, Member States may decide not to apply Article 6 **during a transitional period ending 36 months after the entry into force of Directive 2008/.../...** provided that they take the necessary measures to ensure the effective protection of the safety and health of workers. Implementation of this option, however, shall be expressly laid down by a collective agreement or an agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 10, point (c).)*

#### *Justification*

*To do away with a provision that undermines worker health and safety protection and the inalienability of fundamental rights and to maintain the force of ILO agreements and the social legislation and agreements between the two sides of industry in the Member States.*

## Amendment 17

### Council common position – amending act

#### Article 1 – point 6

Directive 2003/88/EC

Article 22 – paragraph 2 - point a

#### *Council common position*

(a) no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article

#### *Amendment*

(a) no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article

16(b), unless he has first obtained the worker's agreement to perform such work. This agreement shall be valid for a period not exceeding **one year** and shall be renewable;

16(b), unless he has first obtained the worker's agreement to perform such work. This agreement shall be valid for a period not exceeding **six months** and shall be renewable;

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 10, point (b))*

*Justification*

*To give workers a greater say during the transitional period.*

**Amendment 18**

**Council common position – amending act**

**Article 1 – point 6**

Directive 2003/88/EC

Article 22 – paragraph 2 – point c – point i

*Council common position*

(i) the time of the signature of the individual employment contract; or

*Amendment*

(i) the time of the signature of the individual employment contract **or during any probationary period**; or

*(See P6\_TA(2005)0175 of 11.5.2005, Article 1, paragraph 10, point (b).)*

*Justification*

*To give workers a greater say during the transitional period.*

**Amendment 19**

**Council common position – amending act**

**Article 1 – point 6**

Directive 2003/88/EC

Article 22 – paragraph 2 – point d

*Council common position*

***(d) no worker who has given an agreement under this Article shall, over a period of seven days, work more than:***

***(i) 60 hours, calculated as an average over a period of three months, unless otherwise provided for in a collective agreement or an agreement between the***

*Amendment*

***deleted***

*social partners; or*

*(ii) 65 hours, calculated as an average over a period of three months, in the absence of a collective agreement and when the inactive part of on-call time is regarded as working time in accordance with Article 2a;*

*Justification*

*A 60- or 65-hour working week is too long. What is more, given that this is an average over a three-month period, 79-hour weeks could be possible.*

**Amendment 20**

**Council common position – amending act**

**Article 1 – point 6**

Directive 2003/88/EC

Article 22 – paragraph 3

*Council common position*

*Amendment*

*3. Subject to compliance with the general principles relating to the protection of the safety and health of workers, where a worker is employed by the same employer for a period or periods that do not exceed ten weeks in total over a period of twelve months, the provisions of paragraph 2(c)(ii) and (d) shall not apply."* **deleted**

*Justification*

*To ensure due protection for the millions of European workers who are on temporary contacts and to whom the Council's wording affords no protection whatsoever.*

**Amendment 21**

**Council common position – amending act**

**Article 1 – point 7**

Directive 2003/88/EC

Article 22a

*Council common position*

*Amendment*

*(7) The following Article shall be* **deleted**



*inserted:*

*"Article 22a*

*Special provisions*

*When a Member State makes use of the option provided for by Article 22:*

*(a) the option set out under point (b) of the first paragraph of Article 19 shall not apply;*

*(b) that Member State may, by way of derogation from Article 16(b) and for objective or technical reasons or reasons concerning the organisation of work, allow, by means of laws, regulations or administrative provisions, the reference period to be set at a period not exceeding six months.*

*Such a reference period shall be subject to compliance with the general principles relating to the protection of the health and safety of workers, and shall not affect the three-month reference period applicable under Article 22(2)(d) to workers who have entered into a valid subsisting agreement under Article 22(2)(a)."*

*Justification*

*This provision is totally meaningless because the reference period is irrelevant to anyone taking up the opt-out, since there is no limit on the working week.*

## **Amendment 22**

**Council common position – amending act**

**Article 1 – point 9**

Directive 2003/88/EC

Article 24a

*Council common position*

*Amendment*

*(9) The following Article shall be inserted:*

*deleted*

*"Article 24a*

*Evaluation report*

*1. By ... \*:*

*(a) Member States which make use of the option under Article 22(1) shall inform the Commission of the reasons, the sector(s), activities and numbers of workers concerned, after consulting the social partners at national level. The report by each Member State shall give information on its effects on workers' health and safety as well as indicating the viewpoints of the social partners at appropriate level, and shall also be submitted to the social partners at national level;*

*(b) Member States which make use of the option under point (b) of the first paragraph of Article 19 shall inform the Commission of the manner in which they have implemented this provision, and of its effects on workers' health and safety.*

*2. By ... \*, the Commission shall, after consulting the social partners at Community level, submit to the European Parliament, the Council and the European Economic and Social Committee a report on:*

*(a) the use of the option under Article 22(1) and the reasons for that use, and*

*(b) other factors which may contribute to long working hours, such as the use of point (b) of the first paragraph of Article 19.*

*The report may be accompanied by appropriate proposals to reduce excessive working hours, including the use of the option under Article 22(1), taking into account its impact on the health and safety of the workers covered by this option.*

*3. The Council shall, on the basis of the report referred to in paragraph 2, evaluate the use of the options provided by this Directive and namely those laid down in point (b) of the first paragraph of Article 19 and Article 22(1).*

*Taking into account this evaluation, the Commission may, by ... \*\*, if appropriate,*

***submit a proposal to the European Parliament and the Council to amend this Directive, including the option laid down in Article 22(1)."***

*Justification*

*There is no point in submitting an evaluation report once the opt-out has ended.*

## PROCEDURE

<b>Title</b>	Aspects of the organisation of working time
<b>References</b>	10597/2/2008 – C6-0324/2008 – 2004/0209(COD)
<b>Date of Parliament's first reading – P number</b>	11.5.2005                      T6-0175/2005
<b>Commission proposal</b>	COM(2004)0607 - C6-0122/2004
<b>Amended Commission proposal</b>	COM(2005)0246
<b>Date receipt of common position announced in plenary</b>	22.9.2008
<b>Committee responsible</b> Date announced in plenary	EMPL 22.9.2008
<b>Rapporteur(s)</b> Date appointed	Alejandro Cercas 25.6.2008
<b>Discussed in committee</b>	4.11.2008
<b>Date adopted</b>	5.11.2008
<b>Result of final vote</b>	+:                      35 -:                      13 0:                      2
<b>Members present for the final vote</b>	Jan Andersson, Iles Braghetto, Philip Bushill-Matthews, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Proinsias De Rossa, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Roger Helmer, Stephen Hughes, Karin Jöns, Sajjad Karim, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Jan Tadeusz Masiel, Maria Matsouka, Elisabeth Morin, Juan Andrés Naranjo Escobar, Csaba Óry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Jacek Protasiewicz, Elisabeth Schroedter, José Albino Silva Peneda, Kathy Sinnott, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer
<b>Substitute(s) present for the final vote</b>	Françoise Castex, Anna Ibrisagic, Rumiana Jeleva, Roberto Musacchio, Dimitrios Papadimoulis, Patrizia Toia, Georgios Toussas, Claude Turmes
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Giles Chichester, Árpád Duka-Zólyomi