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****I**

R E P O R T

of the Committee on Social Affairs, Employment and the
Working Environment

on the Commission proposal for a Council directive
concerning certain aspects of the organization of working
time

(COM(90) 0317 final - C3-0326/90 - SYN 295)

Rapporteur: Mr Adrien ZELLER

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PART A : Amendments
Draft legislative resolution

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

***** = Consultation procedure requiring a single reading

****II** = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

****I** = Cooperation procedure (first reading)

******* = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

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By letter of 9 October 1990 the Council consulted the European Parliament, pursuant to Article 118a of the EEC Treaty, on the Commission proposal for a Council directive concerning certain aspects of the organization of working time.

At the sitting of 12 October 1990 the President of Parliament announced that he had referred this proposal to the Committee on Social Affairs, Employment and the Working Environment as the committee responsible and to the Committee on Women's Rights and the Committee on Economic and Monetary Affairs and Industrial Policy for their opinions.

At its meeting of 27 September 1990 the Committee on Social Affairs, Employment and the Working Environment had appointed Mr Zeller rapporteur.

At its meetings of 27 September, 16 October, 6 November and 30 November 1990 it considered the Commission proposal and draft report.

At its meeting of 19 December 1990 it adopted the draft legislative resolution by 15 votes to 3, with one abstention.

The following took part in the vote: van Velzen, chairman; Barros Moura, vice-chairman; Barton (for Carniti), Bontempi (for Imbeni), Buron, Cabezon Alonso, Catasta, Hughes, McCubbin (for Peters), Megahy, Nielsen, Nianias, O'Hagan, Onur (for Peter), Rønn, Sandbæk, Salisch, Van Oustrive (for Torres Couto) and Wilson.

The following members of the PPE Group were present for the vote but did not take part: Brok, Chanterie, Deprez, Hadjigeorgiou, Menrad, Oomen-Ruijten, Pronk and Zeller, rapporteur.

The explanatory statement and the opinion of the Committee on Women's Rights will be published separately; the Committee on Economic and Monetary Affairs and Industrial Policy decided at its meeting of 3 December 1990 not to deliver an opinion.

The report was tabled on 20 December 1990.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

Commission proposal for a Council directive concerning
certain aspects of the organization of working time

Commission text(1)

Amendments

(Amendment No. 1)
Second recital a (new)

Whereas it is appropriate that in the areas of its competence the Community should respect at least the Conventions of the International Labour Organization with regard to weekly rest periods; namely Convention No. 14 on weekly rest periods for industry and Convention No. 106 on weekly rest periods for commerce and offices, and whereas it is appropriate to implement Recommendation No. 103 which calls for a weekly rest period of 36 hours; whereas with regard to work for women, Convention No. 89 on night work for women in industry should be implemented;

(Amendment No. 2)
Second recital

Whereas, pursuant to that Article, such directives must avoid imposing administrative, financial and legal constraints which would hold back the creation and development of small and medium-sized undertakings;

Whereas, pursuant to that Article, such directives must avoid imposing administrative, financial and legal constraints which would hold back the creation and development of small and medium-sized undertakings; whereas there is a link between hours worked and wage and pay rates;

(1) Full text: COM(90) 317 final - OJ No. C 254, 9.10.1990, pp. 4-6

Commission text

Amendment

(Amendment No. 3)

Fifth recital

Whereas the Community Charter of the Fundamental Social Rights of Workers states at Title 1, point 7 that the completion of the internal market must lead to an improvement in the living and working conditions of workers, a process which must result from an approximation of those conditions, while maintaining the improvement, as regards in particular the duration and organisation of working time; whereas point 8 states that every worker of the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which must be progressively harmonized in accordance with national practices;

Whereas the Community Charter of the Fundamental Social Rights of Workers states at Title 1, point 7 that the completion of the internal market must lead to an improvement in the living and working conditions of workers, a process which must result from an approximation of those conditions, while maintaining the improvement, as regards in particular the duration and organisation of working time; whereas point 8 states that every worker of the European Community shall have a right to a guaranteed minimum wage, to a weekly rest period and to annual paid leave, the duration of which must be progressively harmonized in accordance with national practices;

(Amendment No. 4)

Sixth recital a (new)

Whereas the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations;

(Amendment No. 5)

Eighth recital a (new)

Whereas workers cannot be forced to perform shift or night work and whereas it is therefore appropriate for the employer to be required to provide alternatives within the undertaking for such workers who do not wish to be employed on shift work when an undertaking alters the work organization by introducing or extending shift or night work;

Commission text

Amendment

(Amendment No. 6)
Eighth recital a (new)

Whereas it is recognized that many Community workers are driven to work long hours, mainly in order to achieve a decent level of income, even though the nature and duration of such extra work may have an impact upon their health and safety and that of their fellow workers;

(Amendment No. 7)
After the fifteenth recital, fifteenth recital a (new)

Whereas greater degrees of flexibility must be introduced as a matter of urgency into daily, weekly, and annual working time in order to enable men and women to reconcile their working and family life;

(Amendment No. 8)
After the fifteenth recital, fifteenth recital b (new)

Whereas a reduction in working time can contribute to the improvement of living and working conditions;

(Amendment No. 9)
Article 2(1)

For the purpose of this Directive the following definitions shall apply:

1. 'Working time' means hours of work as laid down by legislation, collective/enterprise agreements or individual employment contracts during which the employee is at the disposal of the employer at the worksite;

For the purpose of this Directive the following definitions shall apply:

1. 'Effective working time' means hours of work as laid down by legislation, enterprise agreements or individual employment contracts during which the employee is at the disposal of the employer;

(Amendment No. 10)
Article 2(3)

3. 'Night work' means all work performed during a period of not less than seven consecutive hours comprised between 8 p.m. and 9 a.m.;

3. 'Night work' means all work performed during a period of not less than four consecutive hours established on the basis of collective bargaining agreements comprised between 8 p.m. and 9 a.m.;

Commission text

Amendment

(Amendment No. 11)
Article 2(5)

5. 'Night worker' means an employee who performs night work, whether through shift work or otherwise on a regular basis;

5. 'Night worker' means an employee who performs night work, whether through shift work or otherwise on a regular basis or occasionally beyond a minimum threshold laid down by each of the Member States after consultation with representative employers' and workers' organizations;

(Amendment No. 12)
Article 2a (new)

Member States shall adopt the necessary measures to ensure that in principle weekly working time is limited to a maximum of 38 hours and daily working time to a maximum of 8 hours. By 1992 the statutory working week under the laws of the Member States shall not exceed 38 hours. Weekly working time shall be reduced to 35 hours with effect from 1 June 1994. By means of appropriate measures and by encouraging negotiations between the two sides of industry, Member States shall undertake to bring about a gradual reduction in working time. All hours worked outside the normal working time shall be considered as overtime and shall, as a minimum requirement, be converted into a supplementary rest period.

All derogations from this rule shall be the subject of a negotiated agreement in the form of a collective agreement with the workers' representatives, without, however, exceeding the maximum of 144 working hours (including breaks) per four continuous weeks, with a maximum of 60 working hours per week and 12 working hours per day. They shall also respect the provisions set out hereafter.

The reduction in normal working time shall not entail any reduction in pay.

Commission text

Amendment

(Amendment No. 13)
Article 3

Member States shall adopt the necessary measures to ensure compliance with the minimum daily rest period of eleven consecutive hours per period of 24 hours.

Member States shall adopt the necessary measures to ensure compliance with the minimum daily rest period of twelve consecutive hours for a period of 24 hours exclusive of travel and waiting time related to work.

(Amendment No. 14)
Article 4

Member States shall adopt the necessary measures to ensure compliance, in every seven-day period, with the minimum period of one rest day on average following without interruption the daily rest period as defined in Article 3 calculated over a reference period of not more than fourteen days.

Member States shall adopt the necessary measures to ensure that each worker is in principle entitled to a free weekend, except in sectors where cultural, emergency, security or technical constraints exist and where weekly leave days must be the subject of negotiated agreements. In this case equivalent rest periods must be agreed on.

(Amendment No. 15)
Article 5

Member States shall adopt the necessary measures to ensure that all workers are afforded an annual paid holiday for a minimum period; the procedures relating to duration and any splitting shall be determined in accordance with national practices.

Member States shall adopt the necessary measures to ensure that all workers are afforded an annual paid holiday for a minimum period of four weeks calculated over a reference period of 12 months during which they perform their work in the enterprise. Where at least half of the work offered in an annual period was night work, the minimum period of annual holiday shall be increased to five weeks. It shall not be possible to replace annual paid holiday with financial compensation.

Commission text

Amendment

(Amendment No. 16)

Article 6

The performance of overtime must not interfere with the minimum rest periods laid down in Articles 3 and 4.

The performance of overtime must not interfere with the minimum rest periods laid down in Articles 3, 4 and 5 and must not lead to working time exceeding the average 48 hours per week calculated over a reference period of not more than 14 days.

(Amendment No. 17)

Article 6a (new)

1. Normal hours of work for a day worker shall not exceed an average of eight hours in any 24 hour period.
2. Subject to provisions contained in Article 6, no overtime shall be performed by day workers before or after a daily period of work which includes day work in occupations involving special hazards, or physical or mental strain.
3. There should be a break away from the work area of at least half an hour duration after a maximum of 4.5 hours.

Commission text

Amendment

(Amendment No. 18)

Article 6b (new)

Member States shall adopt the necessary measures in order to ensure that in principle night work is prohibited. Derogations from this rule may be permitted only subject to a negotiated agreement in the form of a collective agreement with the workers' representatives, in which as a minimum the provisions below shall be respected.

Before arrangements on working time which include night work are introduced, prior agreement shall be obtained from the authorities responsible for health, safety and employment.

(Amendment No. 19)

Article 6c (new)

Member States shall adopt the necessary measures to ensure that a worker is not forced to perform shift or night work.

If an undertaking wishes to alter the work organization by introducing or extending the system of shift work, night work or work according to a specific rota, it shall be required to conclude an agreement with the workers' representatives with regard to the arrangements on working time, the measures to be adopted concerning the health and safety of workers, transport to and from work, child care and alternatives which do not involve loss of earnings or status for those workers already employed who do not opt for these new arrangements on working time.

Commission text

Amendment

(Amendment No. 20)
Article 7(1), (2)

1. Normal hours of work for night-workers shall not exceed an average of 8 hours in any 24-hour period calculated over a reference period not longer than 14 days in which they perform night work.

2. In the event of shift work involving night work, the working of two consecutive full-time shifts shall be prohibited.

1. Normal hours of work for night-workers shall not exceed 8 hours in any 24 hours, except where the organization of the work specifically requires this, in which case these 8 hours maximum may be calculated on average over a period of seven days subject to agreement with the enterprise concerned.

2. In the event of shift work involving night work, the working of two consecutive shifts shall be prohibited. This work shall be prohibited for employees under the age of 18 years.

(Amendment No. 21)
SECTION III
Article 7(3)

3. Subject to the provisions contained in paragraph 1, no overtime shall be performed by night-workers before or after a daily period of work which includes night work in occupations involving special hazards or heavy physical or mental strain.

3. Subject to the provisions contained in Article 7(1), no overtime shall be performed by night-workers before or after a daily period of work which includes night work in occupations involving special hazards or heavy physical or mental strain. Within six months of the publication of this directive the Commission shall publish a non-exhaustive annex illustrating the special hazards and heavy physical or mental strains involved.

(Amendment No. 22)
SECTION III
Article 7(3)(a) (new)

3(a). The normal working hours of a night-worker shall be less than the average working hours of workers performing the same work by day in the economic sector or enterprise concerned.

Commission text

Amendment

(Amendment No. 23)
SECTION III
Article 7(4)

4. The scheduling and total length of breaks for rotating shift-workers and for night-workers shall take account of the more demanding nature of those forms of working time.

4. The scheduling and total length of breaks for rotating shift-workers and for night-workers shall take account of the more demanding nature of those forms of working time and shall be considered effective working time. There should be a break away from the work area of a least half an hour after a maximum of 4 1/2 hours.

(Amendment No. 24)
Article 7(4a) (new)

4a. The period of annual paid leave shall be longer than the normal period.

Member States shall take whatever steps are necessary to ensure that a lower age limit and fewer years of work apply to night-workers and rotating shift-workers to entitle them to a retirement pension equal to that available to a worker working normal hours.

(Amendment No. 25)
Article 7a (new)

7a. The assignment of women to night work shall not prejudice the guarantee of equal treatment between men and women at work or lead to increased discrimination against women.

Commission text

Amendment

(Amendment No. 26)

Article 8(1)

1. Employees durably subject to working-time arrangements involving night work shall be entitled to a health assessment without charge prior to their assignment and at regular intervals thereafter.

1. Employees durably subject to working-time arrangements involving night work shall be entitled to a health assessment without charge prior to their assignment and at regular intervals thereafter. This shall be carried out more frequently than for day workers and at least once a year up to the age of 40 and twice a year at least after 40.

(Amendment No. 27)

Article 8(1)a (new)

1a. The results of the medical examination referred to in paragraph 1 shall be subject to medical secrecy and may not be disclosed to the employer unless the medical condition of the worker is such that disclosure is essential for safety reasons.

(Amendment No. 28)

Article 8(2)

Where a night worker suffers from health problems recognized to be connected with the fact that he performs night work he shall be transferred, as soon as possible, to day work for which he is fit.

Where a night worker suffers from health problems recognized by a competent authority to be connected with the fact that he performs night work he shall be transferred, as soon as possible, to day work for which he is fit. If he is unfit for this work in the meantime he shall be compensated. Employees undergoing training, with new family responsibilities or reaching a certain age and a substantial number of years of night work or shift work shall be given priority as regards their return to day work. A night worker who is recognized to be temporarily unfit for night work shall be afforded the same protection as regards dismissal and notice as that accorded to other workers prevented from working on health grounds.

Commission text

Amendment

(Amendment No. 29)
Article 8(3) (new)

3. Where transfers due to ill health occur employers shall investigate the causes of night work-related illness (including stress and fatigue) and introduce measures to avoid further illness including, if necessary, changes in work patterns to benefit all employees involved in night work.

(Amendment No. 30)
Article 8(2)a (new)

- 2a. Night work by women shall be prohibited during pregnancy and for six months following the birth of the child, or for one year thereafter where it is certified by the doctor that night work places the woman's health at risk.

(Amendment No. 31)
Article 9

The employer who regularly uses night workers shall duly inform the authorities competent in matters of health and safety.

1. Consultation and participation of workers and/or their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC on the matters covered by this directive. The employer who regularly uses night workers shall duly inform the authorities competent in matters of health and safety. He shall also inform them of any use of overtime.

Commission text

(Amendment No. 32)
Article 10

Amendment

Member States shall adopt the necessary measures to ensure that night workers and rotating shift workers shall have a level of protection with regard to health and safety commensurate with the nature of their work. The employer shall ensure that protection and prevention facilities are available or accessible at all times.

Member States shall adopt the necessary measures to ensure that night workers and rotating shift workers shall have a level of protection with regard to health and safety commensurate with the nature of their work. The employer shall ensure that protection and prevention facilities at least equivalent to those applicable to day workers are available or accessible at all times. Specific facilities must be provided for night-workers (suitably furnished rest areas, eating areas and, if necessary, cooking facilities). The employer shall make provision for the transport of these workers to and from work, adequate and heated rest areas, hot meals and child care facilities. The arrangements shall be agreed in conjunction with the workers' representatives.

(Amendment No. 33)
Article 11

Member States shall ensure that employers take the necessary measures to ensure that changes made to patterns of work take account, according to the type of activity, of health and safety requirements, especially as regards breaks during working hours.

Member States shall ensure that employers take the necessary measures to ensure that patterns of work, the organization of work and individual jobs are planned in such a way as to take into account the specific requirements of night work as regards health and safety, especially the scheduling of breaks during working hours, measures to reduce noise and vibrations and to improve the quality of lighting systems.

Commission text

Amendment

(Amendment No. 34)
Article 12(1)

1. in cases of force majeure, or of an actual or imminent accident, provided that equivalent compensatory rest periods are granted to the employees concerned;

1. in cases of an actual or imminent accident, provided that equivalent compensatory rest periods are granted to the employees concerned;

(Amendment No. 35)
Article 12(2)

2. where the seasonal nature of the work performed or the features peculiar to certain activities or exceptional situations limited in time objectively conflict with the said provisions, provided that equivalent compensatory rest periods are granted within a reference period which must not exceed six months;

2. where the seasonal nature of the work performed or exceptional situations limited in time objectively conflict with the Directive, provided that equivalent compensatory rest periods are granted within the period of the seasonal contract and that an agreement has been concluded with trade union organizations representing employees at the appropriate level;

(Amendment No. 36)
Article 12(3)

3. In case of collective agreements made between employers and representatives of the workers at the appropriate levels, aiming at setting up a comprehensive set of provisions regarding the adjustment of working time corresponding to the specific conditions of the enterprise, including daily and weekly rest periods as well as night and shift work, subject to the condition that on these specific points equivalent periods of compensatory rest are granted to the workers within a reference period that must not exceed six months.

3. In case of collective agreements made between employers' representatives and representatives of the workers at sectoral, national and/or regional levels, aiming at setting up a comprehensive set of provisions regarding the adjustment of working time corresponding to the specific conditions of the enterprise, including daily and weekly rest periods as well as night and shift work, subject to the condition that on these specific points equivalent periods of compensatory rest are granted to the workers within a reference period that must not exceed six months. These agreements must be the subject of an agreement by the relevant authorities.

Commission text

Amendment

(Amendment No. 37)
Article 12(4) (new)

4. Member States shall ensure that an adequate system of inspection shall prevail in Member States in order to enforce the provisions of the above articles.

(Amendment No. 38)
Article 13

The provisions contained in this Directive shall be without prejudice to other specific provisions taken by the Community.

The provisions contained in this Directive shall be without prejudice to other specific provisions taken by the Community.

This Directive shall likewise be without prejudice to the Member States' right to apply or lay down laws, regulations or administrative procedures which are more favourable to the salaried workers covered by this Directive.

A

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament
on the Commission proposal for a Council directive
concerning certain aspects of the organization of working time

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 0317 final - SYN 295)¹,
 - having been consulted by the Council pursuant to Article 118a of the EEC Treaty (C3-0326/90),
 - having regard to the report of the Committee on Social Affairs, Employment and the Working Environment and the opinion of the Committee on Women's Rights (A3-0378/90),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
 6. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 254, 9.10.1990, pp.4-6