

Conciliation "Working Time Directive": Non-paper for reflection

A possible compromise package on the opt-out (concerns amendments 16-22 and 4-6) based on the Council common position, the Parliament proposal from the last conciliation meeting on 1st April and the latest proposal from the Council concerning an evaluation report and a revision clause (amendment 22) could be composed of the following three parts (see below):

Part A: Opt-out - Article 22(1)

Part B: Conditions for the use of the opt-out - Article 22(2)

Part C: Evaluation report and review clause - Article 24a

Part A: Opt-out - Article 22(1)

The following compromise text is based on the solution reached in the year 2000 in conciliation regarding 'doctors in training' (Article 6 of Directive 2000/34/EC):

Article 22(1)

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 *European Union* to work longer, Member States may decide not to apply Article 6 during a transitional period ending ...(*) 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.

~~** 48 months after the entry into force of Directive 2009/.../EC of the European Parliament and of the Council [amending Directive 2003/88/EC concerning certain aspects of the organisation of working time].*~~

Additional transitional periods

Member States shall be permitted to extend the transitional period provided for by Article 22(1) up to [...], if necessary, to take account of difficulties in meeting the working time provisions. At least six months before the end of the transitional period provided for by Article 22(1), the Member State concerned shall inform the Commission giving its reasons, so that the Commission can give an opinion, after appropriate consultations, within the three months following receipt of such information. If the Member State does not follow the opinion of the

Commission, it will justify its decision. The notification and justification of the Member State and the opinion of the Commission shall be published in the Official Journal of the European Union and forwarded to the European Parliament.

Member States may have an additional period of up to [...], if necessary, to take account of special difficulties in meeting the responsibilities referred to in the first paragraph. They shall follow the procedure set out in that paragraph.

Member States shall ensure that during the transitional period, employers making use of the possibility not to apply Article 6 shall consult the representatives of their employees in good time with a view to reaching an agreement, wherever possible, on the arrangements applying to the transitional period. Such an agreement may cover:

- (a) the average number of weekly hours of work during the transitional period; and
- (b) the measures to be adopted to reduce weekly working hours to an average of 48 by the end of the transitional period.

Part B: Conditions for the use of the opt-out (Article 22, paragraph 2)

Article 22, paragraph 2 shall be amended as follows:

2. In any event, Member States wishing to make use of this option shall take the necessary measures to ensure that:

(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 *six months* and shall be renewable;

(b) no worker shall be subjected to any detriment by his employer because he is not willing to give his agreement to perform such work or because he has withdrawn his agreement for any reason;

(c) an agreement given at:

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

shall be null and void;

(d) *[delete the entire option d]*

(e) every worker is entitled to withdraw, - *at any time* with immediate effect-, his agreement to perform such work *[the rest deleted]*

(f) the employer keeps up-to-date records of all workers who carry out such work *and of the number of hours actually worked; [the rest deleted]*

(h) the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven days, calculated as an average for the reference period referred to in Article 16(b); *and of the number of hours actually worked [the rest deleted]*

(i new)

the employer, who is making use of opt-outs in his company, makes a written risk assessment, assessing potential health and safety risks of the introduction or maintenance of opt-out agreements, specifying which measures will be taken to protect the health and safety of workers.

Part C: Evaluation report and review clause - Articles 22a and 24a

The following Article 22a shall be inserted:

Article 22a

Special provisions

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

- (a) the options set out under Article 17.3a *new and* 19(b) shall not apply.
- (b) *[the whole option b shall be deleted]*

The following Article 24a shall be inserted (the text is based on the latest proposal from the Council following COREPER of 7 April)

Article 24a

1. Not later than [...] after the date referred to in Article 3 of this Directive, Member States which make use of derogations from Article 6 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 be submitted to the national social partners. *Member States which make use of Article 17.3a new and/or 19(b) shall inform the Commission of the manner in which they have implemented these provisions, and of their effects on workers' health and safety.*

2. At the same date, the Commission shall set up a working party of experts of the Member States and of the European social partners, which shall closely monitor the use made by the Member States of Article 22.

3. Not later than [...] after the date laid down in Article 3 of this Directive, the Commission shall submit, after consultation of the working party referred to in paragraph 2, to the Council, the European Parliament and the European Economic and Social Committee a report on the use of the option under Article 22 and the reasons for that use, *and other factors which may contribute to long working hours, such as the use of Article 17.3a new and 19(b), and the calculation of maximum working hours per employment contract*, accompanied if necessary by appropriate proposals to reduce excessive working hours.

The report shall 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.

4. The Member States concerned shall, on the basis of the Commission report and their analysis of specific national circumstances, after consultation of the social partners at the appropriate level, re-examine the use of the option provided by *the Directive and namely those allowed by Articles 17.3a (new), 19(b) and 22. The Member States will also evaluate their national experiences with regard to the calculation of maximum working hours per worker or per employment contract.* The Member States shall inform the Commission of the outcome.

5. At the date referred to in paragraph 1, Member States shall inform the Commission of the manner in which they have implemented Article 19(b), and of its effects on workers' health and safety. Where necessary, the report submitted by the Commission in accordance with paragraph 3, dealing with the use of the option under Article 22, may also include the Commission's views on the implementation of Article 19(b).

6. On the basis of the information provided by Member States in accordance with paragraph 5, the Commission shall *not later than [...] years after the date laid down in Article 3 of this Directive* present to the European Parliament, to the Council and the European Economic and Social Committee a report assessing the application of the option under Article 22 and the implementation of Article 19(b) in the Member States.

(Z - Presidency)

Nou - Paper

Revision clause proposed by the Commission on 1st of April 2009
together with new paragraph 6.

no CNS update

New proposal of Article 24a

(Amendment 22)

1. Not later than two years after the date referred to in Article 3 of this Directive, Member States, which make use of derogations from Article 6, 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 shall give information on its effects on workers' health and safety and be submitted to the national social partners.
2. At the same date, the Commission shall set up a working party of experts of the Member States and of the European social partners, which shall closely monitor the use made by the Member States of Article 22.
3. Not later than three years after the date laid down in Article 4 of this Directive, the Commission shall submit, after consultation of the working party referred to in paragraph 2, to the Council, the European Parliament and the European Economic and Social Committee a report on the use of the option under Article 22 and the reasons for that use, accompanied if necessary by appropriate proposals to reduce excessive working hours.
4. The Member States concerned shall, on the basis of the Commission report and their analysis of specific national circumstances, after consultation of the social partners at the appropriate level, re-examine the use of the option provided by Article 22. The Member States shall inform the Commission of the outcome.
5. At the date referred to in paragraph 1, Member States shall inform the Commission of the manner in which they have implemented Article 19(b), and of its effects on

workers' health and safety. Where necessary, the report submitted by the Commission in accordance with paragraph 3, dealing with the use of the option under Article 22, may also include the Commission's views on the implementation of Article 19(b).

6. On the basis of the information provided by Member States in accordance with paragraph 5, the Commission shall present to the European Parliament, to the Council and the European Economic and Social Committee a report assessing the application of the option under Article 22 and the implementation of Article 19(b) in the Member States. This report may, if appropriate, be accompanied by a legislative proposal.

This option may be combined with:

additional paragraph (point c) - see below), which would allow member states to use opt-out under the condition that they will not apply derogation from on call time.

New proposal of Article 22a point c)

(Amendment 21)

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);

(c) the option set out under paragraph (1a) and (1b) of Article 17 shall not apply.

CZ - Presidency

Splitting

Non - Paper -

1. Deleting of all provisions on opt-out from amended proposal of the Directive (common position of the Council):

- Recital points 11, 12, 13, 14
- Article 1 paragraph 6 and 7

(i.e. regulation of opt-out of existing Directive is retained).

2. Revision clause proposed by the Commission on 1st of April 2009 together with new paragraph 6.

This option may be combined with:

1. additional paragraph (point c) - see below), which would allow member states to use opt-out under the condition that they will not apply derogation from on call time.

Article 22a remains - i.e. Article 1 paragraph 7 of amended proposal of the Directive (common position of the Council) and new point c) in this Article will be added:

„(c) the option set out under paragraph (1a) and (1b) of Article 17 shall not apply.“