

EUROPEAN PARLIAMENT

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2009

Delegation to the Conciliation Committee
WORKING TIME DIRECTIVE
COD(2004)0209

IPOL-E-CONCILIATION D (2009) 23886

Brussels, 28 April 2009

Note for the attention of
Mr. Klaus Welle, Secretary General

Please find attached a record of the Conciliation Committee meeting of 27 April 2009 on the Working Time Directive.

K. BAIER

Copies:

Office of the President:

Ms. K. RUHRMANN, Mr. E. ALPERMANN,

Office of the Secretary General:

Mrs. K. FREDSGAARD, Mr. A. TEASDALE

DG IPOL: Mr. R. RIBERA D'ALCALA, Director General., Mrs. E. VANDENBOSCH, Director f.f.,

Ms. R. DE VICENTE

Committee on Employment and Social Affairs:

Mr. P. KONSTANTOPOULOS, Ms. O. CAMASOIU

Legal Service: Mr. C. PENNERA, Mr. E. PERILLO, Mrs. M. GOMEZ-LEAL, Mr. G. RICCI

Directorate of Legislative Acts: Mrs E. DUDZINSKA, Mr. K. KNUDSEN

RECORD OF THE CONCILIATION COMMITTEE OF 27 APRIL 2009

OUTCOME OF THE MEETING

The Conciliation Committee on the Working Time Directive¹ held its third meeting in the evening of Monday, 27 April 2009. After 4,5 hours of negotiations the Conciliation Committee met at 00.30 and decided that no agreement was possible. The main stumbling block was the possible "opt-out" from the maximum weekly working time of 48 hours. The EP delegation decided to reject the last compromise text with a clear majority (0 in favour, 15 against, 5 abstentions). It should be noted that this is the first time since the entry into force of the Treaty of Amsterdam that the Conciliation Committee does not reach an agreement².

PROCEEDINGS OF THE MEETING

The evening of the Conciliation negotiations started with a trilogue at 7.10 p.m.. Parliament was represented by Mrs. Mechthild ROTHE, Vice-President and Chair of the delegation, and the Members of the negotiating team: Mr. Alejandro CERCAS, Mr. Jan ANDERSSON, and Mr. José Albino SILVA PENEDA. The Council was represented by Ms. Jana REINIŠOVÁ, Chair of COREPER I. Mr. Vladimír ŠPIDLA, Commissioner, represented the Commission.

In this first trilogue, the Presidency informed about the results of last Friday's COREPER underlining that the most difficult issue remains the 'opt-out'. Council opposed not only the phasing out of the 'opt-out' but also an agreement on conditions to the use of the 'opt-out' (e.g. no 'opt-out' during an employee's appropriation period etc).

The EP Delegation met at 8.50 p.m. and mandated the negotiation team to pursue the discussions, in particular, on the three main issues: opt-out, on-call time and multiple contracts.

The second trilogue started at 10.25 p.m. and Mr. Nečas, Deputy Prime Minister and Minister of Labour and Social Affairs, represented the Council. The Commission presented a new compromise package which, however, did not take into consideration a possible phase out the 'opt-out'. The discussions in the trilogue concentrated on a final effort to search common ground on the opt-out issue. Finally, it was decided to go back to the individual delegations. After some discussion, the EP delegation rejected the Commission proposal with a clear majority (0 in favour, 15 against, 5 abstentions).

The Conciliation Committee met at 00.30 a.m. and confirmed that no agreement was possible.

¹ The Committee was chaired by Mrs Rothe, Vice-President of the European Parliament and Mr. Nečas, Deputy Prime Minister and Minister of Labour and Social Affairs of the Czech Republic. The delegation of the European Parliament was represented by Mechthild Rothe, Vice-President and Chair of the delegation, Alejandro Cercas, rapporteur; Jan Andersson, José Albino Silva Peneda, Edit Bauer, Philip Bushill-Matthews, Stephen Hughes, Hartmut Nassauer, Karin Jöns, Elizabeth Lynne, Elisabeth Schroedter, Juan Andrés Naranjo Escobar, Marie Panayotopoulos-Cassiotou, Csaba Sógor, Anja Weisgerber, Jan Cremers, Gabriela Crețu, Joel Hasse Ferreira, Magda Kósáné Kovács, Lasse Lehtinen, Anne E. Jensen, Ewa Tomaszewska, Ilda Figueiredo. The Commission was represented by Mr. Vladimír Špidla, Commissioner.

² In two other cases ('Take-over bids' and 'port services') the agreement reached in the Conciliation Committee was later rejected in the EP plenary)

MAIN ISSUES

Opt-out

Based on Parliament's second reading, the EP Delegation insisted on ending of the 'opt-out' after a transitional period. Due to a blocking minority in the Council no compromise proposal on this issue was acceptable to the Council. Moreover the Council could not consent to a toughening of the conditions for making use of the 'opt-out'.

On-call time

In line with a recent ruling of the ECJ the Parliament considered on-call time as working time. The Council insisted on a distinction between *active* and *inactive* on-call time whereby the inactive one could be calculated in a specific manner. The EP Delegation considered that this distinction was not in line with the ECJ ruling and that flexibility should be allowed only for certain sectors requiring continuity of service such as the health sector or fire brigades. The EP delegation submitted compromise proposals to this aim, which were rejected by the Council.

Multiple contracts

Though all sides in principle agreed that the provisions of the Directive should apply '*per worker*' and not '*per contract*' thus not allowing workers with multiple employment contracts to work longer hours. However, the Council could not agree to Parliament's request to lay this down in the recitals of the Directive.

PRESS CONFERENCE

The Parliament's negotiating team Ms. Rothe, Mr. Andersson and Mr. Cercas (Mr. Silva Peneda could not be present) held a press conference on 28 April at 10.00 am in order to inform the media about the outcome of yesterday's conciliation.

NEXT PROCEDURAL STEPS

This is the first time that no agreement could be reached in the Conciliation Committee since the Amsterdam Treaty which significantly extended the scope of the codecision procedure. During next week's plenary session, the chair of the Delegation, Mrs. Rothe, will make a statement which will be followed by a debate (on Monday 4 May).

Since there is no agreement, the current directive remains in force, though the Commission may decide to present a new proposal. Such new legislation would need to take into account the rulings of the European Court of Justice on on-call time.
