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31993L0104

Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time

Official Journal L 307 , 13/12/1993 P. 0018 - 0024

 **MORE INFO** **TEXT:**

COUNCIL DIRECTIVE 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission(1) ,

In cooperation with the European Parliament(2) ,

Having regard to the opinion of the Economic and Social Committee(3) ,

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers;

Whereas, under the terms of that Article, those directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

Whereas the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work(4) are fully applicable to the areas covered by this Directive without prejudice to more stringent and/or specific provisions contained therein;

Whereas the Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council held at Strasbourg on 9 December 1989 by the Heads of State or of Government of 11 Member States, and in particular points 7, first subparagraph, 8 and 19, first subparagraph, thereof, declared that:

'7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions while the improvement is being maintained, as regards in particular the duration and organization of working time and forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work.

8. Every worker in 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.

19. Every worker must enjoy satisfactory health and safety conditions in his

working environment. Appropriate measures must be taken in order to achieve further harmonization of conditions in this area while maintaining the improvements made.';

Whereas the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations; Whereas this Directive is a practical contribution towards creating the social dimension of the internal market;

Whereas laying down minimum requirements with regard to the organization of working time is likely to improve the working conditions of workers in the Community;

Whereas, in order to ensure the safety and health of Community workers, the latter must be granted minimum daily, weekly and annual periods of rest and adequate breaks; whereas it is also necessary in this context to place a maximum limit on weekly working hours;

Whereas account should be taken of the principles of the International Labour Organization with regard to the organization of working time, including those relating to night work;

Whereas, with respect to the weekly rest period, due account should be taken of the diversity of cultural, ethnic, religious and other factors in the Member States; whereas, in particular, it is ultimately for each Member State to decide whether Sunday should be included in the weekly rest period, and if so to what extent;

Whereas research has shown that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of work organization and that long periods of night work can be detrimental to the health of workers and can endanger safety at the workplace;

Whereas there is a need to limit the duration of periods of night work, including overtime, and to provide for employers who regularly use night workers to bring this information to the attention of the competent authorities if they so request;

Whereas it is important that night workers should be entitled to a free health assessment prior to their assignment and thereafter at regular intervals and that whenever possible they should be transferred to day work for which they are suited if they suffer from health problems;

Whereas the situation of night and shift workers requires that the level of safety and health protection should be adapted to the nature of their work and that the organization and functioning of protection and prevention services and resources should be efficient;

Whereas specific working conditions may have detrimental effects on the safety and health of workers; whereas the organization of work according to a certain pattern must take account of the general principle of adapting work to the worker;

Whereas, given the specific nature of the work concerned, it may be necessary to adopt separate measures with regard to the organization of working time in certain sectors or activities which are excluded from the scope of this Directive;

Whereas, in view of the question likely to be raised by the organization of working time within an undertaking, it appears desirable to provide for flexibility in the application of certain provisions of this Directive, whilst ensuring compliance with the principles of protecting the safety and health of workers;

Whereas it is necessary to provide that certain provisions may be subject to derogations implemented, according to the case, by the Member States or the two sides of industry; whereas, as a general rule, in the event of a derogation, the workers concerned must be given equivalent compensatory rest periods,

HAS ADOPTED THIS DIRECTIVE:
SECTION I SCOPE AND DEFINITIONS

Article 1

Purpose and scope

1. This Directive lays down minimum safety and health requirements for the organization of working time.
2. This Directive applies to:
 - (a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and
 - (b) certain aspects of night work, shift work and patterns of work.
3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Article 17 of this Directive, with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training;
4. The provisions of Directive 89/391/EEC are fully applicable to the matters referred to in paragraph 2, without prejudice to more stringent and/or specific provisions contained in this Directive.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. working time shall mean any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;
2. rest period shall mean any period which is not working time;
3. night time shall mean any period of not less than seven hours, as defined by national law, and which must include in any case the period between midnight and 5 a. m.;
4. night worker shall mean:
 - (a) on the one hand, any worker, who, during night time, works at least three hours of his daily working time as a normal course; and
 - (b) on the other hand, any worker who is likely during night time to work a certain proportion of his annual working time, as defined at the choice of the Member State concerned:
 - (i) by national legislation, following consultation with the two sides of industry; or
 - (ii) by collective agreements or agreements concluded between the two sides of industry at national or regional level;
5. shift work shall mean any method of organizing work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks;
6. shift worker shall mean any worker whose work schedule is part of shift work.

SECTION II MINIMUM REST PERIODS - OTHER ASPECTS OF THE ORGANIZATION OF WORKING TIME

Article 3

Daily rest

Member States shall take the measures necessary to ensure that every worker is

entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.

Article 4

Breaks

Member States shall take the measures necessary to ensure that, where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

Article 5

Weekly rest period

Member States shall take the measures necessary to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3.

The minimum rest period referred to in the first subparagraph shall in principle include Sunday.

If objective, technical or work organization conditions so justify, a minimum rest period of 24 hours may be applied.

Article 6

Maximum weekly working time

Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers:

1. the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry;
2. the average working time for each seven-day period, including overtime, does not exceed 48 hours.

Article 7

Annual leave

1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

SECTION III NIGHT WORK - SHIFT WORK - PATTERNS OF WORK

Article 8

Length of night work

Member States shall take the measures necessary to ensure that:

1. normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period;
2. night workers whose work involves special hazards or heavy physical or mental strain do not work more than eight hours in any period of 24 hours during which they perform night work.

For the purposes of the aforementioned, work involving special hazards or heavy physical or mental strain shall be defined by national legislation and/or practice

or by collective agreements or agreements concluded between the two sides of industry, taking account of the specific effects and hazards of night work.

Article 9

Health assessment and transfer of night workers to day work

1. Member States shall take the measures necessary to ensure that:
 - (a) night workers are entitled to a free health assessment before their assignment and thereafter at regular intervals;
 - (b) night workers suffering from health problems recognized as being connected with the fact that they perform night work are transferred whenever possible to day work to which they are suited.
2. The free health assessment referred to in paragraph 1 (a) must comply with medical confidentiality.
3. The free health assessment referred to in paragraph 1 (a) may be conducted within the national health system.

Article 10

Guarantees for night-time working

Member States may make the work of certain categories of night workers subject to certain guarantees, under conditions laid down by national legislation and/or practice, in the case of workers who incur risks to their safety or health linked to night-time working.

Article 11

Notification of regular use of night workers

Member States shall take the measures necessary to ensure that an employer who regularly uses night workers brings this information to the attention of the competent authorities if they so request.

Article 12

Safety and health protection

Member States shall take the measures necessary to ensure that:

1. night workers and shift workers have safety and health protection appropriate to the nature of their work;
2. appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers are equivalent to those applicable to other workers and are available at all times.

Article 13

Pattern of work

Member States shall take the measures necessary to ensure that an employer who intends to organize work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, depending on the type of activity, and of safety and health requirements, especially as regards breaks during working time.

SECTION IV MISCELLANEOUS PROVISIONS

Article 14

More specific Community provisions

The provisions of this Directive shall not apply where other Community

instruments contain more specific requirements concerning certain occupations or occupational activities.

Article 15

More favourable provisions

This Directive shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.

Article 16

Reference periods

Member States may lay down:

1. for the application of Article 5 (weekly rest period), a reference period not exceeding 14 days;
2. for the application of Article 6 (maximum weekly working time), a reference period not exceeding four months.

The periods of paid annual leave, granted in accordance with Article 7, and the periods of sick leave shall not be included or shall be neutral in the calculation of the average;

3. for the application of Article 8 (length of night work), a reference period defined after consultation of the two sides of industry or by collective agreements or agreements concluded between the two sides of industry at national or regional level.

If the minimum weekly rest period of 24 hours required by Article 5 falls within that reference period, it shall not be included in the calculation of the average.

Article 17

Derogations

1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Article 3, 4, 5, 6, 8 or 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:

- (a) managing executives or other persons with autonomous decision-taking powers;
- (b) family workers; or
- (c) workers officiating at religious ceremonies in churches and religious communities.

2. Derogations may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry provided that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection:

- 2.1. from Articles 3, 4, 5, 8 and 16:

- (a) in the case of activities where the worker's place of work and his place of residence are distant from one another or where the worker's different places of work are distant from one another;

(b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;

(c) in the case of activities involving the need for continuity of service or production, particularly:

(i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, residential institutions and prisons;

(ii) dock or airport workers;

(iii) press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services;

(iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants;

(v) industries in which work cannot be interrupted on technical grounds;

(vi) research and development activities;

(vii) agriculture;

(d) where there is a foreseeable surge of activity, particularly in:

(i) agriculture;

(ii) tourism;

(iii) postal services;

2.2. from Articles 3, 4, 5, 8 and 16:

(a) in the circumstances described in Article 5 (4) of Directive 89/391/EEC;

(b) in cases of accident or imminent risk of accident;

2.3. from Articles 3 and 5:

(a) in the case of shift work activities, each time the worker changes shift and cannot take daily and/or weekly rest periods between the end of one shift and the start of the next one;

(b) in the case of activities involving periods of work split up over the day, particularly those of cleaning staff.

3. Derogations may be made from Articles 3, 4, 5, 8 and 16 by means of collective agreements or agreements concluded between the two sides of industry at national or regional level or, in conformity with the rules laid down by them, by means of collective agreements or agreements concluded between the two sides of industry at a lower level.

Member States in which there is no statutory system ensuring the conclusion of collective agreements or agreements concluded between the two sides of industry at national or regional level, on the matters covered by this Directive, or those Member States in which there is a specific legislative framework for this purpose and within the limits thereof, may, in accordance with national legislation and/or practice, allow derogations from Articles 3, 4, 5, 8 and 16 by way of collective agreements or agreements concluded between the two sides of industry at the appropriate collective level.

The derogations provided for in the first and second subparagraphs shall be allowed on condition that equivalent compensating rest periods are granted to the workers concerned or, in exceptional cases where it is not possible for objective reasons to grant such periods, the workers concerned are afforded appropriate protection.

Member States may lay down rules:

- for the application of this paragraph by the two sides of industry, and

- for the extension of the provisions of collective agreements or agreements

concluded in conformity with this paragraph to other workers in accordance with

national legislation and/or practice.

4. The option to derogate from point 2 of Article 16, provided in paragraph 2, points 2.1. and 2.2. and in paragraph 3 of this Article, may not result in the establishment of a reference period exceeding six months.

However, Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons or reasons concerning the organization of work, collective agreements or agreements concluded between the two sides of industry to set reference periods in no event exceeding 12 months.

Before the expiry of a period of seven years from the date referred to in Article 18 (1) (a), the Council shall, on the basis of a Commission proposal accompanied by an appraisal report, re-examine the provisions of this paragraph and decide what action to take.

Article 18

Final provisions

1. (a) Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 23 November 1996, or shall ensure by that date that the two sides of industry establish the necessary measures by agreement, with Member States being obliged to take any necessary steps to enable them to guarantee at all times that the provisions laid down by this Directive are fulfilled.

(b) (i) However, a Member State shall have the option not to apply Article 6, while respecting the general principles of the protection of the safety and health of workers, and provided it takes the necessary measures to ensure that:

- 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 point 2 of Article 16, unless he has first obtained the worker's agreement to perform such work,
- no worker is subjected to any detriment by his employer because he is not willing to give his agreement to perform such work,
- the employer keeps up-to-date records of all workers who carry out such work,
- the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours,
- 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 point 2 of Article 16.

Before the expiry of a period of seven years from the date referred to in (a), the Council shall, on the basis of a Commission proposal accompanied by an appraisal report, re-examine the provisions of this point (i) and decide on what action to take.

(ii) Similarly, Member States shall have the option, as regards the application of Article 7, of making use of a transitional period of not more than three years from the date referred to in (a), provided that during that transitional period:

- every worker receives three weeks' paid annual leave in accordance with the conditions for the entitlement to, and granting of, such leave laid down by national legislation and/or practice, and

- the three-week period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

(c) Member states shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member states.

3. Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.

4. Member States shall communicate to the Commission the texts of the provisions of national law already adopted or being adopted in the field governed by this Directive.

5. Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the viewpoints of the two sides of industry.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work thereof.

6. Every five years the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive taking into account paragraphs 1, 2, 3, 4 and 5.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 23 November 1993.

For the Council

The President

M. SMET

(1) OJ No C 254, 9. 10. 1990, p. 4.

(2) OJ No C 72, 18. 3. 1991, p. 95; and Decision of 27 October 1993 (not yet published in the Official Journal).

(3) OJ No C 60, 8. 3. 1991, p. 26.

(4) OJ No L 183, 29. 6. 1989, p. 1.

