

COUNCIL EPSCO - 9 June 2008

Subject: Amended proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time

The following changes are made to doc. DS 611/08:

Article 22(1a)(d)

Article 22(1a)(d) is replaced by the following:

"(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 3 months, unless otherwise provided for in a collective agreement or an agreement between the social partners;** or

(ii) 65 hours, **calculated as an average over a period of 3 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;

Article 22(1a)(e)

Article 22(1a)(e) is replaced by the following:

- (e) every worker is entitled to withdraw his agreement to perform such work during the first six months after signature of a valid agreement **or during and up to three months after the probation period specified in his contract is completed whichever is longer** with immediate effect, by informing his employer **in due time** in writing that he is doing so. Thereafter, the employer may require the worker to give, in writing, a period of notice, which shall not exceed two months;

Article 22(1b)

Article 22(1b) is replaced by the following:

- 1b. 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 **10 weeks** in total over a period of 12 months, the provisions in paragraph 1a, subparagraphs (c)(ii) and (d), shall not apply."

Article 24a(2) and (3)

Article 24a(2) and (3) are replaced by the following:

- 2. Not later than four years after the date laid down in Article 3 of Directive (2008/-/EC), the Commission, after consulting the European Social Partners, shall submit, to the Council, the European Parliament 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 Article 19(b).

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

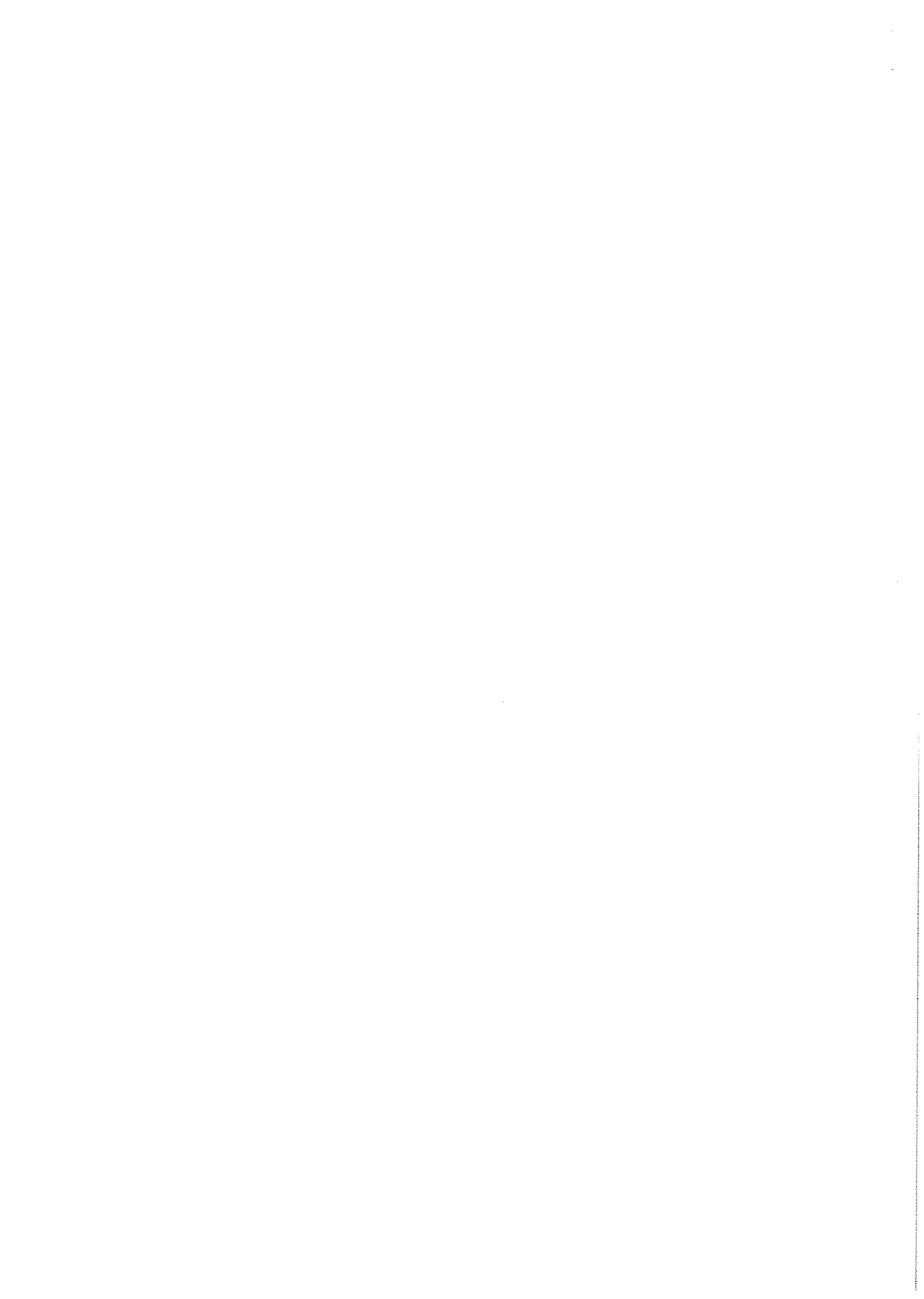
3. The Council will, on the basis of the Commission report, evaluate the use of the options provided by the Directive and namely those allowed by Articles 19(b) and 22.

Taking into account this evaluation, and not later than five years after the date laid down in Article 3 of Directive (2008/-/EC), the Commission may, if appropriate, submit a proposal to the Council and European Parliament to revise the Directive, **including the option laid down under Article 22(1)**."

Article 3

The date in Article 3(1) is three years after the entry into force of the Directive.

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COMPROMISE BY THE PRESIDENCY

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Article 137 of the Treaty provides that the Community should support and supplement the activities of the Member States with a view to improving the working environment to protect workers' health and safety. Directives adopted on the basis of the aforementioned Article must avoid imposing any administrative, financial or legal constraints in such a way as to hold back the creation and development of small and medium-sized undertakings.

- (2) Directive 2003/88/CE of the European Parliament and of the Council of 4 November 2003, concerning certain aspects of the organisation of working time, establishes minimum requirements concerning the organisation of working time, inter alia in respect of daily and weekly rest periods, breaks, maximum weekly working time, annual leave and certain aspects of night work, shift work and patterns of work.
- (3) Two provisions of Directive 2003/88/EC have a clause providing for a review before 23 November 2003. They are Article 19 and Article 22(1).
- (4) More than ten years after the adoption of Council Directive 93/104/EC, the initial Directive concerning the organisation of working time, it has become necessary to take into consideration new realities and demands from both employers and workers and provide the resources to meet the growth and employment objectives laid down by the European Council on 22 and 23 March 2005 in the context of the Lisbon strategy.
- (5) Reconciliation of work and family life is also an essential element for achieving the objectives set by the Union in the Lisbon strategy, particularly for increasing the rate of employment amongst women. The aim is not only to create a more satisfactory working environment, but also to respond better to workers' demands, in particular those with family responsibilities. A number of amendments introduced in Directive 2003/88/EC are intended to permit greater compatibility between work and family life.
- (6) In this context, the Member States should encourage the social partners to conclude agreements at the appropriate level for improving reconciliation of work and family life.

- (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 a more flexible organisation of working time on the other.
- (7a) 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) The provisions on the reference period must also be re-examined, with the objective of adapting them to the needs of employers and employees subject to safeguards for the protection of workers' health and safety.
- (8a) Whenever the duration of the employment contract is less than one year, the reference period should not be longer than the duration of the employment contract.
- (9) The experience gained in the application of Article 22(1) shows that the purely individual decision not to be bound by Article 6 of the Directive can be problematic with regard to the protection of workers' health and safety and the freedom of choice of the worker.
- (9a) 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 protect these conditions, and to close monitoring.

- (9ab) Before implementing the option provided in Article 22(1), consideration should be given to whether the longest reference period or other flexibility provisions provided by the Directive do not guarantee the flexibility needed.
- (9b) 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 Article 19(b), and the option under Article 22(1) of this Directive is not possible.
- (9c) Deleted.
- (10) In accordance with Article 138(2) of the Treaty, the Commission consulted the social partners at Community level on the possible direction for Community action in this field.
- (11) Following this consultation, the Commission considered that Community action was desirable and consulted the social partners again on the content of the envisaged proposal, in accordance with Article 138(3) of the Treaty.
- (12) Following this second phase of consultation, the social partners at Community level did not inform the Commission of their wish to initiate the process which could lead to the conclusion of an agreement, as set out in Article 138(4) of the Treaty.
- (13) Given that the objective of the planned action, which consists of modernising Community legislation concerning the organisation of working time, cannot be achieved sufficiently by the Member States and may therefore be better realised at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary for the attainment of those objectives.

(14) This Directive respects fundamental rights and observes the principles specifically recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to fair and equitable working conditions referred to in Article 31 of the Charter of Fundamental Rights of the European Union, and in particular paragraph 2 thereof, which lays down that "every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave".

(14a) Whereas the implementation of this Directive would maintain the general level of protection afforded to workers as regards health and safety at work.

(15) In accordance with the principles of subsidiarity and proportionality referred to in Article 5 of the Treaty, the objectives of the action envisaged above cannot be achieved adequately by the Member States, in so far as this involves modifying a Community legal act in force.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/88/EC is hereby amended as follows:

1. In Article 2, paragraphs 1a, 1aa and 1b shall be added:

"1a. "on-call time": period during which the worker has the obligation to be available at the workplace in order to intervene, at the employer's request, to carry out his activity or duties.

1aa. "workplace": the place or places where the worker normally carries out his activities or duties and which is determined in accordance with the terms laid down in the employment relationship or contract applicable to the worker.

1b. "inactive part of on-call time": period during which the on-call worker is on call within the meaning of paragraph 1a but is not required by his employer to effectively carry out his activity or duties."

2. The following Article 2a shall be added:

"Article 2a

On-call time

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 decides 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 rest periods laid down in Articles 3 (daily rest period) and 5 (weekly rest period), 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 effectively carries out his activity or duties during on-call time shall always be regarded as working time."

3. The following Article 2b shall be added:

"Article 2b

Reconciliation of work and family life

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

The Member States shall ensure, without prejudice to Directive 2002/14/EC 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 flexibility in their working hours and patterns, the Member States shall, in accordance with national practises, 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."

4. Deleted.

5. Article 17 shall be amended as follows:

- (a) In paragraph 1, the terms "Articles 3 to 6, 8 and 16" shall be replaced by "Articles 3 to 6, 8 and 16(a) and (c)".
- (b) In Article 17(2), the terms "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 agreement concluded between the social partners".

(c) In paragraph 3, in the introductory sentence, the terms "Articles 3, 4, 5, 8 and 16" shall be replaced by "Articles 3, 4, 5, 8 and 16(a) and (c)".

(d) Paragraph 5 shall be amended as follows:

(i) The first indent shall be replaced as follows:

"In accordance with paragraph 2 of this Article, derogations may be made from Article 6 in the case of doctors in training, in accordance with the provisions set out in the second to the sixth indents of this paragraph."

(ii) The final indent shall be deleted.

6. In Article 18, third subparagraph, the expression "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 agreement concluded between the social partners".

7. Article 19 shall be replaced by the following:

"Without prejudice to Article 22a, paragraph (b) and by way of derogation from Article 16(b), 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 organisation of work, the reference period to be set at a period not exceeding 12 months:

(a) by collective agreement or agreement between the social partners, as laid down in Article 18;

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

In making use of the option in paragraph (b), Member States shall ensure that employers respect their obligations as laid down in Section II of Directive 89/391/EC."

8. Deleted.

9. Article 22 shall be amended as follows:

"Article 22

Miscellaneous provisions

- 1. Although the general principle is that the working week in the EU should consist of a maximum of 48 hours and that in practice it is an exception for workers in the EU 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 collective agreement or agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.
 - 1a. 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 one year 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 withdraws his agreement for any reason;

(c) an agreement given at:

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

(ii) during the first four weeks of the employment relationship

is null and void;

(d) **unless otherwise provided for in a collective agreement or an agreement between the social partners**, no worker who has given an agreement under this Article shall, over a period of seven days, calculated as an average over a period of 3 months, work more than:

(i) 60 hours [...]: or

(ii) 65 hours, when the inactive part of on-call time is regarded as working time, in accordance with Article 2a;

(e) every worker is entitled to withdraw his agreement to perform such work during the first **six months** after signature of a valid agreement with immediate effect, by informing his employer in writing that he is doing so. Thereafter, the employer may require the worker to give, in writing, a period of notice, which shall not exceed **two months**;

*in due
time*

*or during and up to 3
months after the probation
period specified in his contract
is completed whichever is the
longer*

- (f) the employer keeps up-to-date records of all workers who carry out such work and adequate records for establishing that the provisions of this Directive are complied with;
- (g) 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;
- (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 adequate records for establishing that the provisions of this Directive are complied with.

1b. 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 **3 months** in total over a period of 12 months, the provisions in paragraph 1a, subparagraphs (c)(ii) and (d), shall not apply."

10. The following Article 22a shall be added:

"Article 22a
Special provisions

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

- (a) the option set out under Article 19(b) shall not apply.

- (b) That Member State may, by way of derogation from Article 16 (b), allow by means of laws, regulations or administrative provisions, for objective or technical reasons, or reasons concerning the organisation of work, the reference period to be set at a period not exceeding 6 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(1a)(d) to workers who have entered into a valid subsisting agreement under Article 22(1a)(a)."

11. Article 24 is modified as follows:

"Article 24

Reports

1. 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.
2. 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 European Economic and Social Committee and the Advisory Committee on Safety and Health at Work thereof.

3. Every five years from 23 November 1996 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive taking into account paragraphs 1 and 2 of this Article."

12. The following Article 24a shall be added:

"Article 24a

Evaluation report

1. Not later than three years after the date referred to in Article 3 of Directive (2008/-/EC):

- (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 national social partners.
- (b) Member States which make use of Article 19(b) shall inform the Commission of the manner in which they have implemented this provision, and of its effects on workers' health and safety.

2. Not later than four years after the date laid down in Article 3 of Directive (2008/-/EC), the Commission, after consulting the European Social Partners, shall submit, to the Council, the European Parliament 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 Article 19(b).

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

3. The Council will, on the basis of the Commission report, evaluate the use of the options provided by the Directive and namely those allowed by Articles 19(b) and 22.

Taking into account this evaluation, and not later than five years after the date laid down in Article 3 of Directive (2008/-/EC), the Commission may, if appropriate, submit a proposal to the Council and European Parliament to revise the Directive."

Article 2

*including
the option laid down under
article 22(3).*

Member States shall lay down rules on sanctions applicable in the event of infringements of national provisions enacted under this Directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by the date given in Article 3 at the latest and any subsequent amendment in good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest, or shall ensure that the social partners introduce the necessary provisions by way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this Directive are being attained. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the [...] day after its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at, [...]

For the European Parliament

The President

For the Council

The President
