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

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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;

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(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.

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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.

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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 Articles 14 and 17 of this Directive.

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This Directive shall not apply to seafarers, as defined in Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers, concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) ([1]) without prejudice to Article 2(8) of this Directive.

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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;

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7. 'mobile worker' shall mean any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway;

8. 'offshore work' shall mean work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel;

9. 'adequate rest' shall mean that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.

([1]) OJ L 167, 2.7.1999, p. 33.

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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.

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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;