29 July 2004

RE-EXAMINATION OF DIRECTIVE CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME

UNICE POSITION

Executive summary

Legislation on working time has a strong influence on how production can be organised in companies. Since its adoption in 1993, economic and societal circumstances have evolved, due to globalisation on the one hand, and to individualisation of lifestyles on the other hand. Flexibility in working time has become even more crucial for companies' competitiveness. Moreover, as stated in the report of the Employment Task Force chaired by Wim Kok, "flexibility is not just in the interest of employers, it also serves the interests of workers". Last but not least, flexibility of working time is also crucial to fulfil the Lisbon agenda of turning Europe into the most competitive knowledge-based economy in the world.

Following the second-stage consultation of social partners on revision of the working time directive, UNICE informed the European Commission it saw no prospect for reaching agreement on how to revise the directive through negotiations in the social dialogue.

UNICE insists that, when proposing a revised directive, the Commission should aim to make it easier for companies to improve working time flexibility across the enlarged European Union and should resist any calls to introduce new rigidities, which would be particularly damaging for the economic development of new Member States.

In UNICE's view, Directive 2003/88/EC, set to replace, Directive 93/104/EC on 2 August 2004, should be amended to:

- average the reference period for calculating weekly working time over 12 months as a general rule, with a possibility to extend it beyond 12 months by collective agreement;
- foresee explicitly opt-outs by means of collective agreements in addition to retaining the possibility of the individual opt-outs;
- modify the definition of working time in the following way: "working time means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, ***excluding inactive periods during on-call duty and similar situations***, in accordance with national laws and/or practice";
- extend the reference period for the weekly rest period from 7 to 14 days.

To this end, UNICE proposes amendments to articles 2, 5, 16, 17, 19 and 22.

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Permanent/2004/Revision of working time directive-EN 29 July 2004

RE-EXAMINATION OF DIRECTIVE CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME

UNICE POSITION

I. Introduction

2. On 19 May 2004, the European Commission published the second-stage consultation of the social partners concerning the review of directive 93/104/EC concerning certain aspects of the organisation of working time. The Commission confirms the intention to adopt a global approach encompassing reference periods, interpretation of the definition of working time following the SIMAP and Jaeger cases, conditions for implementation of the opt-out, reconciliation of work and family life.

3. The Commission asked the social partners:
   - to notify, if applicable, their intention to initiate the negotiation process, in accordance with Article 138(4) and Article 139 of the EC Treaty;
   - to forward an opinion or, where appropriate, a recommendation on the objectives and content of the envisaged proposal in accordance with Article 138(3) of the EC Treaty.

   The Commission asked the social partners to include with their opinions or recommendations, where appropriate, an assessment of the impact of the above measures and of any alternative put forward.

II. General comments on the need to improve working time flexibility

4. Legislation on working time has a strong influence on how production can be organised in companies. Since its adoption in 1993, economic and societal circumstances have evolved, due to globalisation on the one hand and to individualisation of lifestyles on the other hand. Flexibility in working time has become even more crucial for companies' competitiveness. Moreover, as stated in the report of the Employment Task Force chaired by Wim Kok, "flexibility is not just in the interest of employers, it also serves the interests of workers". Last but not least, flexibility of working time is also crucial to fulfil the Lisbon agenda of turning Europe into the most competitive knowledge-based economy in the world.

5. Following the second-stage consultation of social partners on revision of the working time directive, UNICE informed the European Commission it saw no prospect for reaching agreement on how to revise the directive through negotiations in the social dialogue.

6. UNICE insists that when proposing a revised directive the Commission should aim to make it easier for companies to improve working time flexibility across the enlarged European Union and should resist any calls to introduce new rigidities, which would be particularly damaging for the economic development of new Member States.

7. In UNICE's view, Directive 2003/88/EC, set to replace Directive 93/104/EC on 2 August 2004, should be amended to:

- average the reference period for calculating weekly working time over 12 months as a general rule, with a possibility to extend it beyond 12 months by collective agreement;

- foresee explicitly opt-outs by means of collective agreements in addition to retaining the possibility of the individual opt-outs;

- modify the definition of working time in the following way: "working time means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, ***excluding inactive periods during on-call duty and similar situations***, in accordance with national laws and/or practice";

- extend the reference period for the weekly rest period from 7 to 14 days.

8. To this end, UNICE proposes amendments to articles 2, 5, 16, 17, 19 and 22 (see the actual wording of the amendments as well as justification for each amendment at annex).

III. Specific comments on the content of a revised directive

On the reference periods

9. Averaging the reference period over 12 months has become the dominant pattern in practice. Having a reference period for calculation of weekly working time of 12 months as a general rule and not as a derogation would reflect this trend and:

   - respond to the needs of a growing number of companies in various sectors, which are faced with important business-related fluctuations of activity such as seasonal variations;
   - reduce the burden of administration of working in companies, especially SMEs;
   - make it easier for companies and workers to agree on individualised working time arrangements, for example to reconcile work and family life whether or not this is covered by collective agreement;
   - support employment in periods of fluctuating demand.

10. Moreover, it would be useful to open possibilities to extend the reference periods beyond 12 months by collective agreement or other agreements.

11. Finally, short cyclical working time schedules (for example two days during the morning, two days during the afternoon and two days during the night) are introduced to better protect the health and safety of the workers concerned. The directive only allows these schedules where a Member State has made use of the possibility of article 16 to extend the reference period for the weekly rest period from 7 to 14 days. UNICE believes that, for the weekly rest period (article 5), a reference period of 14 days should be the general rule.

On the opt-out

12. The second consultation document proposes four options:

    - tighten the conditions for application of the individual opt-out in order to strengthen its voluntary nature and prevent abuse in practice. Such conditions could for instance include the separation in time between the individual consent and the signature of the employment contract. They could also include an

obligation to review regularly the individual consent given by the employee as well as a cap on the maximum number of hours permitted.

- stipulate that derogations from the provisions on maximum weekly working time are only possible through collective agreements or agreements between the social partners. This would mean that the individual opt-out would not longer be allowed.

- provide that derogations from the 48-hour rule would only be possible when authorised by means of collective agreements or agreements between social partners. In undertakings without such applicable agreement and no representation of the employees, the individual opt-out under tighter conditions would remain applicable. This would mean that an individual opt-out would still be possible, but only if an opt-out established by collective agreements or agreements between social partners were not possible.

- revise the individual opt-out, with a view to its phasing-out, as soon as possible, and tighten, in the meanwhile, the conditions for application of the individual opt-out in order to strengthen its voluntary nature and prevent abuse in practice.

13. The flexibility of the opt-out is essential for companies and different Member States have found different solutions for dealing with the opt-out taking into account the different systems of national labour relations. UNICE believes that none of the options proposed by the Commission would, in isolation, provide an adequate solution. It is essential that Member States which so wish can continue to allow companies to agree opt-outs by means of agreements with individual employees. This is the most suitable option in countries where collective agreements are not widespread and where the tendency to have individual employment contracts makes it most appropriate for these issues to be decided by individual agreements between employers and employees. Replacing the individual opt-out with a collective opt-out (as suggested by options two and three in the Commission's document) would be inappropriate.

14. However, UNICE is also concerned with option one in the Commission's document which only suggests keeping the individual opt-out with a tightening of the conditions for its application. In UNICE's view, the current directive already includes appropriate provisions to prevent abuses. Abuses of the opt-out should be dealt with where they exist, but the issue should be treated by compliance measures operating at Member-State level and not by removing the opt-out or changing the wording of article 22. Moreover, this option does not assist those Member States which wish to allow companies to reach opt-out agreements by means of collective agreements. Given the diverse range of industrial relations practices in place across the EU, UNICE believes that the most appropriate way forward would be to keep the individual opt-out in article 22 as it stands and add an additional clause allowing Member States to permit opt-out agreements by collective agreement.

On the definition of the working time

15. In its second consultation document, the Commission suggests dealing with the consequences of the ECJ court cases by adding a new category of time at the EU level, i.e. "inactive part of on-call time", which would include characteristics of the existing categories, i.e. working time and rest period, including clarifications regarding compensatory rest.

16. In UNICE's view, the solution lies in modifying the definition of working time in the following way: "working time means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, ***excluding inactive periods during on-call duty and similar situations***, in accordance with national laws and/or practice".

17. UNICE insists that only time actually worked should be considered as working time. The issue does not only concern workers doing on call duty in sectors such as health care or in industrial activities where in-company fire brigades exist, such as chemical plants, nuclear plants and other power stations. In many other sectors there are cases in which the worker is merely at the employer's disposal (for example, when the worker is travelling). Considering this time as working time could de facto raise costs for many sectors for example due to the need to increase manpower in order to compensate this reduction of real working time. The EU legislator should avoid any move towards cutting working time in Europe further, since it is already low compared with its main international competitors such as US and Japan.

18. Member State with a third category of time which is not considered actual working time, should be allowed to keep this solution but all Member States or all sectors should not be obliged to have a third category of time.

On ensuring compatibility between work and family life

19. While recognising that the directive may not be the right instrument to reach this aim, in its second consultation document the Commission confirms that more could be done to encourage this objective in the text of the directive. It therefore intends to include an article encouraging social partners to negotiate measures to improve compatibility between work and family life.

20. European employers insist that a revised directive based on article 137(1)(a) of the Treaty of European Union (i.e. the protection of the health and safety of workers) should not include any provision concerning reconciling work and family life. Calling on social partners to negotiate on this issue would mean unacceptable interference by the EU legislator in the autonomy of the social dialogue in Member States as well as the European social dialogue. Moreover, in the framework of their work programme 2003-2005, the European social partners are currently discussing a framework of action on gender equality, which will also address the issue of the reconciling work and family life.

IV. Conclusion

21. In UNICE's view, Directive 2003/88/EC, set to replace Directive 93/104/EC on 2 August 2004, should be amended to:

- average the reference period for calculating weekly working time over 12 months as a general rule, with a possibility to extend it beyond 12 months by collective agreement;

- foresee explicitly opt-outs by means of collective agreements in addition to retaining the possibility of the individual opt-outs;

- modify the definition of working time in the following way: "working time means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, ***excluding inactive periods during on-call duty and similar situations***, in accordance with national laws and/or practice";

- extend the reference period for the weekly rest period from 7 to 14 days.

22. Finally, European employers insist that a revised directive based on article 137(1) a of the Treaty of European Union (i.e. the protection of the health and safety of workers) should not include any provisions on reconciling work and family life. Calling on social partners to negotiate on this issue would mean unacceptable interference by the EU legislator in the autonomy of the social dialogue in Member States as well as the European social dialogue.

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Annexe: Specific proposals for amendments in the directive

Actual wording in the directive	UNICE amendments	Justification
CHAPTER 1 SCOPE AND DEFINITIONS		
Article 1 Purpose and scope 1. This Directive lays down minimum safety and health requirements for the organisation 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 Articles 14, 17, 18 and 19 of this Directive. This Directive shall not apply to seafarers, as defined in Directive 1999/63/EC without prejudice to Article 2(8) of this Directive. 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" means 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" means any period which is not working time; 3. "night time" means 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 5.00; 4. "night worker" means: (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;	Article 2 Definitions For the purposes of this Directive, the following definitions shall apply: 1. "working time" means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, ***excluding inactive periods during on-call duty and similar situations***, in accordance with national laws and/or practice; 2. "rest period" means any period which is not working time; […..]	*In UNICE's view, only time actually worked should be considered as working time. The issue does not only concern workers doing on call duty in sectors such as health care or in industrial activities where in-company fire brigades exist, such as chemical plants, nuclear plants and other power stations. In many other sectors there are cases in which the worker is merely at the employer's disposal (for example, when the worker is travelling). Considering this time as working time could de facto raise costs for many sectors for example due to the need to increase manpower in order to compensate this reduction of real working time. The EU legislator should avoid any move towards cutting working time in Europe further, since it is already low compared with its main competitors such as US and Japan.*

5. "shift work" means any method of organising 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" means any worker whose work schedule is part of shift work; 7. "mobile worker" means 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" means 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" means 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.		

CHAPTER 2 MINIMUM REST PERIODS - OTHER ASPECTS OF THE ORGANISATION 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. If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied.	Article 5 Weekly rest period Member States shall take the measures necessary to ensure that, ***with respect to*** each seven-day period, ***calculated over a reference period of fourteen days***, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3. If objective, technical or work organisation conditions so	*Short cyclical working time schedules (for example two days during the morning, two days during the afternoon and two days during the night) are introduced to better protect the health and safety of the workers concerned. The directive only allows these schedules where a Member State has made use of the possibility of article 16 to*

	justify, a minimum rest period of 24 hours may be applied.	*extend the reference period for the weekly rest period from 7 to 14 days. For the weekly rest period a reference period of 14 days as the general rule would be in the interest of both employers and workers.*
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: (a) 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; (b) 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.		

CHAPTER 3 NIGHT WORK - SHIFT WORK - PATTERNS OF WORK		
Article 8 Length of night work Member States shall take the measures necessary to ensure that: (a) normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period; (b) 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 point (b), 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 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 recognised 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: (a) night workers and shift workers have safety and health protection appropriate to the nature of their work; (b) 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 organise 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.		

CHAPTER 4 MISCELLANEOUS PROVISIONS		
Article 14 More specific Community provisions This Directive shall not apply where other Community instruments contain more specific requirements relating to the organisation of working time for 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: (a) for the application of Article 5 (weekly rest period), a reference period not exceeding 14 days; (b) for the application of Article 6 (maximum weekly	Article 16 Reference periods Member States may lay down: ***{delete (a) "for the application of Article 5 (weekly rest period), a reference period not exceeding 14 days"};***	*A 14-day reference period for the weekly rest period should be the general rule (see amendment to article 5).*

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; (c) 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.	(a) for the application of Article 6 (maximum weekly working time), a reference period not exceeding ***twelve*** 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; [….]	*Averaging the reference period over 12 months has become the dominant pattern in practice. Having a reference period for calculation of the weekly working time of 12 months as a general rule and not as a derogation would reflect this trend and:* ➢ *respond to the needs of a growing number of companies in various sectors, which are faced with important business-related fluctuations of activity such as seasonal variations;* ➢ *reduce the burden of administration of working in companies, especially SMEs;* ➢ *make it easier for companies and workers to agree on individualised working time arrangements, for example to reconcile work and family life whether or not this is covered by collective agreement;* ➢ *support employment in periods of fluctuating demand.*
CHAPTER 5 DEROGATIONS AND EXCEPTIONS		
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 Articles 3 to 6, 8 and 16 when, on account of the specific characteristics of the	Article 17 Derogations […] 3. In accordance with paragraph 2 of this Article derogations may be made from	

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 provided for in paragraphs 3, 4 and 5 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. 3. In accordance with paragraph 2 of this Article derogations may be made 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, including offshore work, 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;	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, including offshore work, 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, including the activities of doctors in training, residential institutions and prisons; (ii) dock or airport workers;	

(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, including the activities of doctors in training, 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; (viii) workers concerned with the carriage of passengers on regular urban transport services; (d) where there is a foreseeable surge of activity, particularly in:	(iii) press, radio, television, ***performing arts***, 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; (viii) workers concerned with the carriage of passengers on regular urban transport services; […]	*Performers in the arts sector, might perform for a very short time every day of the week during a limited period of time. Imposing an <u>uninterrupted</u> rest period of 24 hours would therefore not be feasible.*

(i) agriculture; (ii) tourism; (iii) postal services; (e) in the case of persons working in railway transport: (i) whose activities are intermittent; (ii) who spend their working time on board trains; or (iii) whose activities are linked to transport timetables and to ensuring the continuity and regularity of traffic; (f) in the circumstances described in Article 5(4) of Directive 89/391/EEC; (g) in cases of accident or imminent risk of accident. 4. In accordance with paragraph 2 of this Article derogations may be made 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. 5. In accordance with paragraph 2 of this Article, derogations may be made from Article 6 and Article 16(b), in the case of doctors in training, in accordance		

with the provisions set out in the second to the seventh subparagraphs of this paragraph. With respect to Article 6 derogations referred to in the first subparagraph shall be permitted for a transitional period of five years from 1 August 2004. Member States may have up to two more years, if necessary, to take account of difficulties in meeting the working time provisions with respect to their responsibilities for the organisation and delivery of health services and medical care. At least six months before the end of the transitional period, 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 one year, if necessary, to take account of special difficulties in meeting the responsibilities referred to in the third subparagraph. They shall follow the procedure set out in that subparagraph. Member States shall ensure that in no case will the number of weekly working hours exceed an average of 58 during the first three years of the transitional period, an average of 56 for the following two years and an average of 52 for any remaining period. The employer shall consult the representatives of the employees in good time with a view to reaching an agreement, wherever possible, on the arrangements applying to the transitional period. Within the limits set out in the fifth subparagraph, 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. With respect to Article 16(b) derogations referred to in the first subparagraph shall be permitted provided that the reference period does not exceed 12 months, during the first part of the transitional period specified in the fifth subparagraph, and six months thereafter.		
Article 18 Derogations by collective agreements 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: (a) for the application of this Article by the two sides of industry; and (b) for the extension of the provisions of collective agreements or agreements concluded in conformity with this Article to other workers in accordance with national legislation and/or practice.		
Article 19 Limitations to derogations from reference periods The option to derogate from Article 16(b), provided for in Article 17(3) and in Article 18, 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 organisation of work, collective agreements or agreements concluded between the two sides of industry to set reference periods in no event exceeding 12 months. Before 23 November 2003, the Council shall, on the basis of a Commission proposal accompanied by an appraisal report, re-examine the provisions of this Article and decide what action to take.	Article 19 Limitations to derogations from reference periods ***{Delete "The option to derogate from Article 16(b), provided for in Article 17(3) and in Article 18, may not result in the establishment of a reference period exceeding six months."}*** ***{Delete "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 organisation of work, collective agreements or agreements concluded between the two sides of industry to set reference periods ***{delete in no event}*** exceeding 12 months. ***{Delete "Before 23 November 2003, the Council shall, on the basis of a***	*A 12-month reference period should be the rule (see amendments to article 16(b)).* *Prior to entry into force of the working time directive, it was possible to conclude collective agreements establishing a reference period exceeding 12 months. This corresponded to the needs of many companies or sectors. The revised directive should open possibilities to extend the reference periods beyond 12 months by collective agreement to reinstate the flexibility that existed before.* *The date referred to has passed.*

	Commission proposal accompanied by an appraisal report, re-examine the provisions of this Article and decide what action to take"}.	
Article 20 Mobile workers and offshore work 1. Articles 3, 4, 5 and 8 shall not apply to mobile workers Member States shall, however, take the necessary measures to ensure that such mobile workers are entitled to adequate rest, except in the circumstances laid down in Article 17(3)(f) and (g). 2. Subject to compliance with the general principles relating to the protection of the safety and health of workers, and provided that there is consultation of representatives of the employer and employees concerned and efforts to encourage all relevant forms of social dialogue, including negotiation if the parties so wish, Member States may, for objective or technical reasons or reasons concerning the organisation of work, extend the reference period referred to in Article 16(b) to 12 months in respect of workers who mainly perform offshore work. 3. Not later than 1 August 2005 the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to offshore workers from a health and safety perspective with a view to presenting, if need be, the appropriate modifications.		
Article 21 Workers on board seagoing fishing vessels		

1. Articles 3 to 6 and 8 shall not apply to any worker on board a seagoing fishing vessel flying the flag of a Member State. Member States shall, however, take the necessary measures to ensure that any worker on board a seagoing fishing vessel flying the flag of a Member State is entitled to adequate rest and to limit the number of hours of work to 48 hours a week on average calculated over a reference period not exceeding 12 months. 2. Within the limits set out in paragraph 1, second subparagraph, and paragraphs 3 and 4 Member States shall take the necessary measures to ensure that, in keeping with the need to protect the safety and health of such workers: (a) the working hours are limited to a maximum number of hours which shall not be exceeded in a given period of time; or (b) a minimum number of hours of rest are provided within a given period of time. The maximum number of hours of work or minimum number of hours of rest shall be specified by law, regulations, administrative provisions or by collective agreements or agreements between the two sides of the industry. 3. The limits on hours of work or rest shall be either: (a) maximum hours of work which shall not exceed: (i) 14 hours in any 24-hour period; and (ii) 72 hours in any seven-day period; (b) minimum hours of rest which shall not be less than: (i) 10 hours in any 24-hour period; and		

(ii) 77 hours in any seven-day period. 4. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours. 5. In accordance with the general principles of the protection of the health and safety of workers, and for objective or technical reasons or reasons concerning the organisation of work, Member States may allow exceptions, including the establishment of reference periods, to the limits laid down in paragraph 1, second subparagraph, and paragraphs 3 and 4. Such exceptions shall, as far as possible, comply with the standards laid down but may take account of more frequent or longer leave periods or the granting of compensatory leave for the workers. These exceptions may be laid down by means of: (a) laws, regulations or administrative provisions provided there is consultation, where possible, of the representatives of the employers and workers concerned and efforts are made to encourage all relevant forms of social dialogue; or (b) collective agreements or agreements between the two sides of industry. 6. The master of a seagoing fishing vessel shall have the right to require workers on board to perform any hours of work necessary for the immediate safety of the vessel, persons on board or cargo, or for the purpose of giving assistance to other vessels or persons in distress at sea. 7. Members States may provide that workers on board seagoing fishing vessels for which national legislation or practice determines that these vessels are not allowed to operate in a specific period of the calendar year exceeding one month, shall take annual leave in accordance with Article		

7 within that period.		
Article 22 Miscellaneous provisions 1. 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: (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; (b) no worker is subjected to any detriment by his employer because he is not willing to give his agreement to perform such work; (c) the employer keeps up-to-date records of all workers who carry out such work; (d) 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; (e) 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 22 Miscellaneous provisions 1. 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: (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; (b) no worker is subjected to any detriment by his employer because he is not willing to give his agreement to perform such work; (c) the employer keeps up-to-date records of all workers who carry out such work; (d) the records are placed at the disposal of the competent authorities, which may, for reasons connected with the	

Article 16(b). Before 23 November 2003, the Council shall, on the basis of a Commission proposal accompanied by an appraisal report, re-examine the provisions of this paragraph and decide on what action to take. 2. 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 23 November 1996, provided that during that transitional period: (a) 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 (b) the three-week period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated. 3. If Member States avail themselves of the options provided for in this Article, they shall forthwith inform the Commission thereof.	safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours; (e) 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). ***{Delete Before 23 November 2003, the Council shall, on the basis of a Commission proposal accompanied by an appraisal report, re-examine the provisions of this paragraph and decide on what action to take}.*** {***Delete: 2. 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 23 November 1996, provided that during that transitional period:*** **(f)** ***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***	*The date referred to has passed.* *The date referred to has passed.*

	practice; and (g) ***the three-week period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.}*** 2. If Member States avail themselves of the options provided for in this Article, they shall forthwith inform the Commission thereof. ***Article 22bis*** ***A Member State shall have the option to entrust social partners to negotiate freely collective agreements or agreements concluded between the two sides of industry derogating from Article 6.***	*The flexibility allowed by the opt-out is essential for companies. Opt-out solutions have taken different forms in different Member States. Some Member States have chosen to permit individual opt-outs and others have sanctioned opt-outs by means of collective agreements.* *It is essential that Member States which so wish can continue to allow companies to agree opt-outs by means of agreements with individual employees. This is the most suitable option in countries where collective agreements are not widespread and where the tendency to have individual employment contracts makes it most appropriate for these issues to be decided by individual agreements between employers and employees.*

		Nevertheless, the argument in the SIMAP case according to which the decision not to be covered by maximum weekly working time should be taken by the worker himself and that "the consent given by trade-union representatives in the context of a collective or other agreement is not equivalent to that given by the worker himself", is unjustified and could undermine the very notion of collective defence of workers interests, which is at the heart of industrial relations systems in most Member States. The possibility to opt out by collective agreements should be explicitly provided for in the directive to limit the damaging effects of the ECJ jurisprudence. *Given the diverse range of industrial relations practices in place across the EU, the most appropriate way forward would be to keep the individual opt-out, but to add an additional clause allowing Member States to permit opt-out agreements by collective agreement.*

CHAPTER 6 FINAL PROVISIONS Article 23 Level of Protection 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.		
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, Hygiene and Health Protection 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 Articles 22 and 23 and paragraphs 1 and 2 of this Article.		
Article 25 Review of the operation of the provisions with regard to workers on board seagoing fishing vessels Not later than 1 August 2009 the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to workers on board seagoing fishing vessels, and, in particular examine whether these provisions remain appropriate, in particular, as far as health and safety are concerned with a view to proposing suitable amendments, if necessary.		

Article 26 Review of the operation of the provisions with regard to workers concerned with the carriage of passengers Not later than 1 August 2005 the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to workers concerned with the carriage of passengers on regular urban transport services, with a view to presenting, if need be, the appropriate modifications to ensure a coherent and suitable approach in the sector.		
Article 27 Repeal 1. Directive 93/104/EC, as amended by the Directive referred to in Annex I, part A, shall be repealed, without prejudice to the obligations of the Member States in respect of the deadlines for transposition laid down in Annex I, part B. 2. The references made to the said repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.		
Article 28 Entry into force This Directive shall enter into force on 2 August 2004.		

Article 29 Addressees This Directive is addressed to the Member States.		