

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE

CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME

(presented by the Commission)

Explanatory memorandum concerning the proposal for a Directive on certain aspects of the organization of working time

I. INTRODUCTION

1. The European Councils of Hanover, Rhodes and Madrid considered that, in the context of the establishment of the internal market, the same importance should be attached to the social aspects and to the economic aspects and that they should therefore be developed in a balanced manner. For their part and taking the same view, Parliament (in numerous own-initiative resolutions) and the Economic and Social Committee (in its opinion of February 1989) also recognized the importance of that approach.

Title 1, point 7 of the Community Charter of the Fundamental Social Rights of Workers lays down that "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 as regards in particular the duration and organization of working time." Point 8 states that "every worker of the European Community shall have the right to a weekly rest period and to annual paid leave, the duration of which must be progressively harmonized in accordance with national practices." Finally, point 19 lays down that "every worker must enjoy satisfactory health and safety conditions in his working environment and that appropriate measures must be taken in order to achieve further harmonization of conditions in this area while maintaining the improvements made".

With that in mind, the Commission stated in its action programme relating to the implementation of the Charter that "the adaptation, flexibility and organization of working time are crucial aspects as regards both working conditions and the dynamism of firms and play a not inconsiderable role in determining the situation of the labour market and the creation of employment." Underlining the importance of the flexibility of labour which enables firms to adapt to the terms of competition and improves their competitiveness, the Commission considered that "... care should be taken to ensure that these practices (i.e. basic conditions with regard to the flexibility of working time as laid down in collective agreements) do not have an adverse effect on the well-being and health of workers. For this reason, as regards the maximum duration of work, rest periods, holidays, night work, week-end work, systematic overtime, it is important that certain minimum requirements be laid down at Community level."

2. Accordingly, pursuant to the Charter and as announced in its action programme, the Commission intends to propose a groundwork of basic provisions on certain aspects of the organization of working time connected with workers' health and safety at work which relate to:
 - minimum daily and weekly rest periods;
 - minimum annual paid holidays;
 - minimum conditions determining the recourse to shift and especially night work;
 - protection of workers' health and safety in the event of changes in working patterns resulting from adjustments in working time.

The Commission takes the view that other issues mentioned in the action programme in the field of the adaptation of working time should be left to both sides of industry and/or national legislation. In addition these matters should be dealt with in depth within the framework of the dialogue between both sides of industry at Community level without prejudice to the Commission's prerogative to submit proposals should it see fit to do so:

- It should first be stressed that the maximum duration of working time is subject to change, especially since developments in relation to the organization of working time (points 4 and 5 below, particularly regarding shiftwork, team work or replacement teams for weekends) make it difficult to fix ceilings and also given the fact that it is necessary to determine a standard reference period (day, week, month, year). To this end, the directive's provisions regarding minimum rest periods, either daily or weekly, offer a "safety net" from the point of view of the health and safety of the workers concerned.
- the Commission feels that the question of systematic overtime is a subject best dealt with by the two sides of industry and by national provisions. Nevertheless, workers' safety and health must be respected and this is the only reason why the Directive includes provisions both for daily and weekly minimum rest periods (Articles 3 and 4) and for night work in jobs carrying a high risk of severe physical or mental stress (Article 6.3).
- The Commission's view on weekend work, i.e. whether it is advisable to make provisions either to ban it or permit it, is that this is an issue which reflects economic, social and cultural conditions and is not directly linked to health and safety at work. Moreover, the development of new patterns of shift work often involves crews working at the weekend, including maintenance crews.

The measures proposed by the Commission in this Directive would supplement the provisions already adopted by the Council or at the Commission proposal stage with regard to fixing minimum requirements by way of Council Directives in the area of health and safety at the workplace, notably with regard to the provisions of the framework Directive 89/391/EEC of 12 June 1989 concerning the introduction of measures to encourage improvements in the safety and health of workers at the workplace. This implies that all Articles of the said Directive are applicable, in particular Articles 7 (protection and preventive services), 10 (information of workers), 11 (consultation and participation of workers) and 12 (training of workers). For the purposes of the above framework Directive, worker means "any person employed by an employer, including trainees and apprentices" (Article 3a) and employer "any natural or legal person who has an employment relationship with the worker and who is responsible for the undertaking and/or the establishment" (Article 3b).

It should be recalled that related proposals covering specific groups on the labour market, i.e. a proposal for a Directive on the protection of pregnant women at work and a proposal for a Directive on the approximation of the laws of the Member States on the protection of young people will be submitted in the summer of 1990 and in the first half of 1991 respectively.

While acknowledging the need for certain basic rules with regard to working time at Community level it should be emphasized that, given the differences arising from national practices, the subject of working conditions in general falls to varying degrees under the autonomy of both sides of industry who often act in the public authorities' stead and/or complement their action. To take account of these differences and in accordance with the principle of subsidiarity the Commission takes the view that negotiation between the two sides of industry should play its full part within the framework of the proposed measures, provided that it is able to guarantee adherence to the principles set out in the Commission's proposal. In other words, it is important in this field, to take into consideration the fact that such agreements concluded by management and labour can in principle make a contribution to the application of Community directives, without, however, releasing the Member States concerned from the responsibility for attaining the objectives sought via these instruments.

In presenting this proposal to the Council, the Commission would underline the importance it attaches, having regard to the principle of subsidiarity, to the consistency of a Community approach which links the completion of the single market and social developments in the field of health and safety at work.

II. RECENT DEVELOPMENTS IN WORKING TIME AND OPERATING HOURS

Quantitative elements and data

4. In recent years the dissociation of individual working time and plant operating hours has been becoming increasingly important in most of the Member States. This tendency has helped to increase capacity utilization, to adapt it smoothly to new circumstances, to achieve productivity gains and to enhance the competitiveness of Community undertakings; as such, it is an important factor for flexibility. Furthermore, the increase in plant operating hours is often conducive to investment in modernization and, in any case, enables undertakings to make savings in relation to the fixed productive capital for a given output. In many cases legislation, but above all the conclusion of a large number of collective agreements have supported the trend towards more flexible use of productive equipment and longer and more varied opening hours among many service undertakings and have in general helped undertakings to become more viable and better adjusted to changing demands. These measures also tend to match more closely the aspirations of employees to combine more successfully occupational and family responsibilities. In addition, the increased flexibility of working time arrangements helps to integrate more people into the labour market and to enhance employment opportunities.

5. By dissociating operating hours and individual working time, according to a recent survey organized by the Commission (published in European Economy Supplement B, 11, 1989 and 2, 1990) operating time can be doubled compared to individual working hours in industry in some Member States. In the retail trade, where opening hours are important, these differences are less marked.

Table 1 and 2 reproduce these data.

Table 1

Working hours and operating hours per week in industry

Member State	average operating hours	working hours (full-time)
Belgium	77	37
Fed. Rep. Germany	53	38
Greece	64	40
Spain	69	40
France	69	39
Ireland	61	41
Italy	73	39
Netherlands	74	39
Portugal	54	44
United Kingdom	76	37
EUR10	66	39

Source: Special EC labour market survey, results published in European Economy Supplement B, 11, 1989.

Table 2

Opening hours and contracted working hours per week in retail trade

Member State	opening hours	working hours (full-time)
Belgium	51	38
Fed. Rep. Germany	48	39
Spain	45	43
France	56	38
Italy	49	38
Netherlands	52	40
Portugal	51	44
United Kingdom	58	39
EUR 8	53	39

Source: Special EC labour market survey, results published in European Economy Supplement B, 2, 1990.

6. As illustrated by the information contained in these tables, there is much flexibility in the Community with regard to the dissociation of individual working time and operating hours. In that context we must consider the extent to which workers can rely on minimum rules concerning certain rest periods to protect themselves against excessively long working hours, which may be detrimental to the health and the safety of the workers at their workplace.

7. Much research has, in fact, shown that work fatigue (depending of course on the type of work and the conditions under which it is exercised) is increased by the duration of working hours (e.g. research by Köppl⁽¹⁾). It has been found, for example, that the physical and mental effort in work exceeding eight hours becomes increasingly strenuous as fatigue sets in. This has even been demonstrated for light work. These effects are exacerbated considerably by jobs requiring static or strained postures, or involving repetitive movements or heavy or complicated tasks, which supports experience that tiredness and loss of concentration cannot be avoided after a certain time span of work. In the context of the application of modern technologies in particular, long hours tend to increase the numbers of errors and mistakes. Greater probability of accidents at work - especially of serious accidents - and increased stress often occurs in the final hours of work, as shown by the research results of Weltz and Frese⁽²⁾. Similarly, Rebhahn and Werner et al.⁽³⁾, when investigating the frequency of accidents and the duration of working time, arrived at the conclusion that longer working hours increased substantially the probability of accidents at work. Such situations are likely to be aggravated by complicated work. In addition, there is the greater psychological burden, not merely the purely physical workload; this causes a feeling of harassment and stress which obviously has an adverse effect on the quality of work and on health in general.

8. Several studies⁽⁴⁾ have been carried out on weekly rest periods. Although they are relatively old (Vernon, United States, 1918 - Industrial Health Research Board Emergency, London, 1942 - Kossoris & Köhler, United States, 1947) they all show that a weekly working time of more than 50 hours could, in the long run, be harmful to the health and safety of workers. Other more recent studies in France in 1975 and 1988⁽⁵⁾ have confirmed these results, showing that there is a positive correlation between working weeks of more than 6 days and some indicators of health (fatigue, disturbed sleep, problems revealed during medicals).

9. The development of flexible work, which, in a sizeable number of undertakings in the industrial and services sectors, has led to "compact" working weeks (less than 4 days of work and less than 40 hours of work per "week") has resulted in the development of new forms of organizing working hours and, in turn, new forms of rest periods. This of ten produces working days which are sometimes appreciably longer (up to 12 hours a day) accompanied by rest periods which are equally as long (of up to one week). It is still

(1) B. Köppl : Intensivierung und Humanisierung, Frankfurt 1981

(2) M. Frese : Stress im Büro, Bern 1981

F. Weltz : Innovation im Büro, O.J.

(3) H. Rebhahn : Überstunden als Unfallursache, 1978

E. Werner et al. : Arbeitszeit und Unfallgeschehen, Dortmund 1979

(4) Earl A. Allusi & Edwin A. Fleischman : Human performance and Productivity: stress and performance effectiveness - temporal factors in human performance and productivity, Hillsdale, N.J. 1982

(5) Alain Wisner & James Carpentier, L'Aménagement des conditions de travail par équipes successives (travail posté), Agence Nationale pour l'Amélioration des Conditions de Travail (ANACT), Ministère du Travail, Paris, 1976, and Dr. Estryn-Behar, Pathologie du personnel hospitalier féminin et conditions de travail, Institut National pour la Santé et les Etudes Médicales (INSERM), Paris, 1988.

too early to say how these new ways of organizing working hours will affect the health and safety of workers in the long term but the effects will have to be monitored.

10. It should also be recalled that the ILO addressed the question of the protection of workers' health and safety with regard to excessive weekly working time in adopting two Conventions on weekly rest periods (No 14 (1921) for Industry and No 106 (1957) for commerce and offices) providing for a minimum rest period of 24 consecutive hours, plus Recommendation No 103 (1957), which calls for at least 36 hours of weekly rest. Physiologically and psychologically the rest period is, the ILO states, necessary "to reconstitute the physical and certain mental forces and to augment the safety of the workers in certain categories of establishments as well as of the persons who are served by them."⁽⁶⁾ Convention No 14 has been ratified by about 100 States (all Member States, apart from the Federal Republic of Germany and the United Kingdom) and Convention No 106 by nearly 50 States (all Member States, apart from Belgium, the Federal Republic of Germany, Ireland, Luxembourg and the United Kingdom). Over one third of industrialized countries provide for a minimum rest period in pursuance of Recommendation No. 103.

With regard to long weekly working hours the ILO pointed out in a report dating from 1988 "there are a number of industries and occupations where many workers are employed for particularly long hours, exceeding 48 or even 60 hours per week. In several of these cases, such as transport and construction, the risks of occupational accidents are greatly augmented as a consequence. At the same time, the exhaustion due to such long hours prevents workers from participating in non-work activities and ultimately threatens their health".⁽⁷⁾

11. Similar considerations also underlie Article 36 of the Italian Constitution which enshrines the right to a one-day weekly rest period, Article 60 §d of the Portuguese Constitution on the right to a weekly rest period, the Spanish Constitution, which in Article 40§2 indirectly recognizes a weekly rest period, the Swedish Working Time Act - which is constructed as a specific law linked to the Work Environment Act of 1977 (section 10) - granting a weekly rest period of 36 consecutive hours and recent Bills on the organization of working time under discussion in the Federal Republic of Germany and the Netherlands. In this context the German Government underlined that it takes the view that "the State has to limit itself to establishing only the limits necessary for maintaining health in the areas of maximum daily working hours, minimum breaks and minimum rest periods."⁽⁸⁾ With regard to maximum weekly working time a ceiling of 60 hours is laid down. The Dutch Government formulated as the central objective of its proposal "the protection of the workers against hours of work which endanger their safety and health"⁽⁹⁾ In this context provision is made for a minimum weekly rest period of 38 hours.

(6) Report VII(1) of the International Labour Conference of 1956: The weekly rest period in commerce and offices.

(7) ILO: Working time issues in industrialized countries, 1988

(8) Sozialpolitische Informationen, September 1984, concerning a new bill on working hours.

(9) Second Chamber, Year 1989/90, File 21083 concerning Act on working hours.

Finally it should be recalled that the Danish Act on the Working Environment of 1975 concerning workers' health and safety states in its § 53 that "wage earners shall take one day off work in every unbroken period of seven days following, without interruption, the period of daily rest".

Rules on minimum rest periods

12. Such health and safety considerations have prompted most Member States to lay down certain rules for rest periods, or, more often, to fix maximum working hours per day and per week. The statutory ceiling for the maximum duration of daily working time (apart from the United Kingdom and Denmark, where such ceilings do not exist) lies between 8 hours and 10 hours or even more in cases of a temporary increase in the workload. Under recent draft laws on the regulation of working time in the Federal Republic of Germany and collective agreements (or even enterprise agreements) in the Netherlands it will be possible to amend or adjust the statutory maxima. In Belgium and France, in the context of the possible reckoning of working time on an annual basis, up to 12 hours may be worked under certain circumstances if working hours are reduced in other periods.

13. In Denmark, Spain and the Netherlands minimum daily rest periods have also been laid down; in Denmark maximum daily working hours are not set statutorily.

14. With regard to fixing an upper limit for the weekly duration of working time, reasons similar to those mentioned for a daily ceiling apply. This is the case under existing national statutory provisions, which explicitly or implicitly apply in all Member States, apart from Denmark and the United Kingdom. Roughly speaking, 48 hours is considered to be such a limit, but there are a number of important exceptions which lay down a higher ceiling for a temporary increase in the workload. Where collective agreements so provide, up to 84 hours per week can be worked in round-the-clock operations e.g. in Belgium, but provided that over a period of 13 weeks the average weekly working time does not exceed 38 hours. On the other hand, it should be stressed that normal weekly working hours, as laid down by collective agreements, range in general from 38 to 41 hours in all Member States, except Portugal, where the average is around 44 hours.

15. With regard to the weekly rest period, which by law lasts for at least 24 hours in seven consecutive days (going up to 36 hours in Spain and 44 hours in Luxembourg), apart from the United Kingdom, where nothing is laid down by law, it should be borne in mind that the actual weekly rest time as resulting from collective agreements is normally two consecutive days in most Member States, with one Member State (Denmark) even stipulating that "the weekly rest period should, as far as possible, include Sunday and be the same for all the enterprise's workforce" except in agriculture and horticulture (Law No 681 of 23 December 1975).

A summary of statutory rules on minimum rest periods and maximum daily working time in the Member States compared with provisions for weekly rest periods in collective agreements is given in table 3.

Table 3

Daily and weekly rest periods (hours)
and daily maximum working time

Statutory provisions

Member State	Daily rest period	Maximum daily working time	Weekly rest period	
			statutory	C.A.
Belgium		12 with C.A.	24	48
Denmark	11		24	48
Fed. Rep. Germany		10	24	48
Greece		12	24	36-48
Spain	12	9	36	48
France		12 with C.A.	24	48
Ireland		12	24	48
Italy		10	24	48
Luxembourg		10	44	48
Netherlands	9 to 11	10	24	48
Portugal		10	24	36-48
United Kingdom		no general statutory provisions		48

Note: C.A. -collective agreements, which cover most workers. The weekly rest period may not fall at the weekend : in that case, equivalent rest periods are normally granted. In addition, many collective agreements provide for more rest periods in the form of roster-free days, additional days where the working week is concentrated into less than 5 days per week, etc.

Conclusion

- The rules governing the entire issue of maximum working hours per day and per week and corresponding rest periods, which in some Member States are under review at present, are mainly justified and motivated on the ground of the health of the employees concerned. The new bills on working time which are under discussion in the Netherlands and the Federal Republic of Germany state explicitly that the workers have to be protected against working hours which may cause damage to their health and safety. Although in the vast majority of cases normal daily and weekly working hours are laid down by collective agreements at levels below the maximum thresholds, thus implying that rest periods are much longer than the minima, the Commission considers that employees' legal certainty should be strengthened in this respect and consequently that certain minimum rest periods per day and per week should be laid down at Community level. These minimum rest periods should be established both per day, where at least 11 hours are proposed, but also per week, in which case one rest day immediately following the daily rest period (a level which is situated at the lower end of what has already been achieved by collective agreements) is laid down. In both cases the minimum rest periods must also be observed

when overtime is performed. In the view of the Commission these are reasonable minima which take account of economic requirements and shift work cycles, since the weekly rest period may be averaged over a period of two weeks. This takes account of the necessary flexibility, as exemplified by the multiplication of "productivity deals" agreed upon by both sides of industry.

Over and above minimum rest periods (either daily or weekly), it is quite clear, however, that changes in working time patterns - especially if such changes are of a repetitive nature - should take into account factors affecting workers' health and safety. To this end, the determination of these patterns and their changes must incorporate break periods, the frequency and the duration of which - although they may vary according to the type of activity - can reduce the workload and the detrimental effects it can have on the health and safety of the workers concerned. The Commission thus believes that it is necessary to take these factors into account when organizing working time, particularly in so far as work patterns are concerned.

III. RECENT DEVELOPMENTS IN SHIFT AND NIGHT WORK

a) Quantitative data

17. The abovementioned surveys by the services of the Commission departments also investigated the importance of shift work and night work by Member State for all employees, both in manufacturing and services. With regard to shiftwork the results show that on average 20% of employees do shiftwork; this percentage includes both regular and occasional shiftwork, a 50% weighting being applied to the latter. This percentage containing regular and occasional shiftwork is highest in the United Kingdom and Spain (29%), higher than average in Belgium and Greece (24% and 23% respectively) and lower than average in Ireland, Italy, the Netherlands (17%), the Federal Republic of Germany (15%), Portugal (12%) and Denmark (11%).

18. Data on the manufacturing industry alone indicate that on average 37% of workers in the Community do shift work. This percentage varies considerably between Member States, reaching 64% in the United Kingdom, 46% in Italy, 45% in Spain, 39% in Belgium, 36% in Ireland, 32% in Greece, 29% in the Netherlands, 25% in France, 22% in the Federal Republic of Germany and 10% in Portugal (Denmark and Luxembourg are not reported). Looking at industrial firms, one finds that some form of shift work is performed in 70% of them. This percentage is highest in Italy and Belgium (80% and more), 74% in France, between 60 and 70% in Spain, the Federal Republic of Germany and the Netherlands, between 50 and 60% in Ireland and Greece and 19% in Portugal. More details on the shiftwork systems performed (continuous, split, etc.) are shown in table 4.

TABLE 4
SHIFTWORK IN INDUSTRY
(as % of enterprises)

	B	D	GR	E	F	IRL	I	NL	P	UK	EUR
yes	80	65	52	68	74	55	83	63	19	73	70
- continuous	22	6	14	17	10	16	9	11	4	14	10
- interrupted each day	37	42	14	27	40	15	35	19	6	22	33
- interrupted each week	21	16	24	24	24	14	38	33	9	17	22
with - 2 shifts	19	46	21	1	25		37	27	10	34	32
- 3 shifts	22	19	24	25	19		31	21	7	29	23
- 4 shifts	7	0	4	33	8		12	2	2	6	7
- 5 shifts	6	0	2	6	4		1	5	0	4	2
- 6 shifts and more	5	0	0	3	1		2	5	0	0	1
- other patterns	4	0	0	1	2		0	2	0	0	1
average number of shifts	3.3	2.3	2.8	3.8	2.9		2.8	3.0	2.6	2.7	3
no	20	35	47	31	26	45	17	37	81	27	30

Source: Special EC labour market survey, results to be published in European Economy

19. As far as night work in the total economy is concerned, the Community average for all employees is about 14%. This percentage includes regular and occasional night work, a 50% weighting being applied to the latter to make the two percentages compatible. This percentage (regular and weighted average of occasional night work) is highest in the United Kingdom (25%), slightly above average in Greece (17%), France and Ireland (15% each), 14% in Spain, 13% in Belgium and Denmark, 12% in the Netherlands and Portugal and 9% in the Federal Republic of Germany and Italy.

Night work in industry is less widespread than in the economy as a whole. On average 11% of workers work during the night in the Community as a whole, this percentage goes up to 23% in Spain, while it is 17% in the Netherlands, 16% in the United Kingdom, 13% in Italy, 10% in Belgium and less than 10% in the other five Member States, dropping to 4% in Portugal.

These quantitative data clearly indicate that a large proportion of the workforce is employed in situations which, according to evidence from scientific research, can have an adverse effect on employees' health.

b) Advantages and risks involved

20. The recourse to night and shift work in recent years, as illustrated by the above-mentioned data, is caused mainly by technical progress involving a more and more clear distinction between the working hours of the workforce and the duration of equipment utilization which permits more intensive capacity utilization in an increasingly large number of firms. Such increased utilization tends to reduce unit production costs, increases flexibility in the use of equipment and is often required to keep firms competitive.

Sometimes, however, such moves are not accompanied by specific measures to avoid certain negative effects or hazards, of night shifts in particular, such as a higher percentage of rejects, an increase in the

number of serious work accidents (especially serious accidents during the night see study by Carpentier and Cazamian for the ILO on night work⁽¹⁰⁾), greater absenteeism (as shown by Rosenstiel⁽¹¹⁾) and higher turnover rates. As well-known researchers such as Rutenfranz⁽¹²⁾, Harrington⁽¹³⁾, Knauth⁽¹⁴⁾ and others have found, there is a higher incidence among shift and night workers of various health troubles, sometimes to a varying degree in relation to the specific complaint, such as cardio-circulatory complaints, gastro-intestinal illnesses, appetite disturbances, sleeping problems, greater recourse to medicines, alcohol and tobacco (as shown by research by Müller⁽¹⁵⁾ and Münstermann/Preiser⁽¹⁶⁾) and, during night shifts in particular, an increased risk of serious work accidents, especially around 3 to 4 a.m. when the performance trough can be identified. In many cases these adverse health effects become apparent only after a number of years. It also appears that night shift workers quite often take stimulants during the night and sleeping pills during the day in order to cope with the reversed organic functioning which is required.

21. A high turnover of employees where night work is involved is a well-established phenomenon. In addition to the increased costs for the company, this can also increase the risk of accidents, because a comparatively large number of persons has to be initiated into a given job with the related negative consequences. Neuberger⁽¹⁷⁾ has also found that shiftwork in the day time reduces the turnover problem considerably. He points out that night shiftwork in particular is mainly responsible for these drawbacks.

22. As the ILO points out in its document on working time in industrialized countries, the rotation of shifts is particularly important in continuous operations. In the light of recent studies on the circadian rhythm of the human body it is generally recommended that shifts should be rotated rapidly, every two or three days, in a forward fashion, and that the longest period of rest should follow the night shift. Other research (Bergmann⁽¹⁸⁾), however, comes to the conclusion that no decision can be taken a priori for or against rapidly rotating shift systems without taking into account the whole work and task situation.

23. Research by Teiger⁽¹⁹⁾, Hannunkari and others has shown that apart from the negative social and cultural influences of night work, the rate

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- (10) J. Carpentier, P. Cazamian : Night Work; ILO, Geneva 1977
 - (11) L.V. Rosenstiel : Betriebsklima geht jeden an; Bayerisches Staatsministerium für Arbeit und Sozialordnung, München 1983
 - (12) J. Rutenfranz : Schichtarbeit und Nachtarbeit, München 1982
 - (13) J.M. Harrington : Shiftwork and Health; London 1978
 - (14) P. Knauth, J. Rutenfranz : Shiftwork; In Recent Advances in Occupational Health, London 1987
 - (15) R. Müller : Nikotin, Alkohol und Medikamentekonsum bei Belastungen am Arbeitsplatz, 1980
 - (16) J. Münstermann, K. Preiser : Schichtarbeit in der Bundesrepublik Deutschland, Bundesministerium für Arbeits- und Sozialordnung, Bonn 1978
 - (17) O. Neuberger: Messung der Arbeitszufriedenheit, Stuttgart 1974
 - (18) Bergmann et al. : Schichtarbeit als Gesundheitsrisiko, Frankfurt 1982
 - (19) C. Teiger : Overmortality among permanent nightworkers : some questions about 'adaptation', Edinburgh 1984

of morbidity and earlier invalidity is higher compared to normal day work. Although a proper selection of personnel, good working conditions, higher pay, more versatile activities and the opportunity for voluntary night and shift work may help to alleviate the problems associated with these patterns of work, all the abovementioned factors taken together are enough evidence that the biological costs of the work performance, especially if a longer term perspective is considered, vary according to the time of the day and its rhythm, because the human body is subject to activity changes, e.g. a higher rate of activity potential in the late morning and a very low level of activity during the night between 3 and 4 a.m. This implies that night work in particular means working against the biological clock; its performance therefore requires much more physical and mental effort. But the body cannot adapt completely to such working hours, as pointed out by Carpentier and Cazamian⁽²⁰⁾.

Regulation

24. Since it has been shown that it is above all night work which entails adverse consequences for the health of the workers concerned, a few details are given on the existing regulation of this form of work.

25. In the Community different political stances are discernible; however, they may not, in practice, diverge much from each other. In Belgium and the Netherlands night work is in principle prohibited for both male and female employees, but there are long lists of exceptions, which may be different for male and female employees. In addition collective agreements may derogate from this general ban, which is also often the case in the Federal Republic of Germany, Greece, France, Italy and Portugal, countries in which night work is in principle prohibited for female workers. In the other Member States there are no limitations on night work, apart from specific protective provisions for certain groups (young persons, pregnant women, nursing mothers). It should be noted that the absence of regulations governing night work in some Member States (Denmark, Ireland, Luxembourg and the United Kingdom) is, by no means, an indication that the authorities do not regard health and safety requirements as a priority issue. It should be also borne in mind that what is defined as the period of night, what is considered as night work and which employee is regarded as a night worker differs from one Member State to another and depends on national legislation and/or collective negotiations. Statutory provisions on the definition of night working hours are shown in table 5.

(20) cf. footnote 10

TABLE 5

Statutory Night Work Hours in the Community

<u>Country</u>	<u>Night Work Hours</u>
BELGIUM	20 to 6
DENMARK	no general legislation
FEDERAL REPUBLIC OF GERMANY	20 to 6
GREECE	22 to 7
SPAIN	22 to 6
FRANCE	22 to 5
IRELAND	no general legislation
ITALY	24 to 6
LUXEMBOURG	no general legislation
NETHERLANDS	20 to 7
PORTUGAL	20 to 7, at least 7 hours in this period
UNITED KINGDOM	no general legislation

26. The issue of night work was discussed at the 77th Session of the International Labour Conference in June 1990 in the context of the revision of Convention No 89 on night work for women. This Convention has been ratified by Belgium, Greece, Spain, France, Italy and Portugal. The Conference adopted a new Convention and a Recommendation making no distinction between men and women as regards their treatment in respect of night work and laying down certain conditions under which night work may be performed. The adoption and future ratification of the Convention as well as the provisions of the accompanying Recommendation endorse at international level the approach of this Commission proposal for a Directive and would, as far as recourse to and terms of night work are concerned, contribute to establishing similar rules for all undertakings thus tending to equalize rules with regard to this issue throughout the world.

Conclusion

27. The Commission is fully aware that a large number of production processes require shift and night work, for technical, social and also economic reasons. Given, however, the serious consequences of night work on employees' health and having regard to existing legal and collective provisions, the Commission proposal aims to establish at Community level that recourse to night work should form part of a context covering, in principle, all employed persons taking into account, however, the

exceptions mentioned in Article 2 (2) of the framework Directive 89/391/EEC and specifying the link between this proposal and that Directive. Since the proposal lays down minimum rules only, this implies that more favourable national and Community provisions are permitted.

28. This proposal essentially lays down the principle that regular recourse to night workers should be duly made known to the authority competent in matters of health and safety. This provision is justified by the evidence presented above of the possible adverse effects of night work on health. This general principle also implies that such information is not necessary under all circumstances, particularly where night work is performed only occasionally.
29. In the event of night work, including rotating shift work, where applicable, the Commission is proposing certain rules.

In defining "night work" and "night worker" the Commission has used the definitions adopted by the International Labour Organisation in its Convention concerning night work (1990). However, the ILO definition of "night worker" refers to "a substantial number of hours of night work which exceeds a specified limit". The Commission wanted to make it clear that this limit should be three hours and therefore defined night work as all work performed during a period of not less than seven consecutive hours between 8.00 pm and 9.00 am. Taking into account the definition of night work hours, it would seem appropriate to state that an average of eight hours' night work in any period of 24 hours would tend to reconcile, on the one hand, health and safety requirements for workers and on the other, production process flexibility. Moreover, since it is necessary to comply with the eight-hour rule only for a night worker (defined as a worker who performs at least three hours of night work in the course of a certain reference period) on average over a period of fourteen days, firms have much leeway in organizing their production and adapting it to market changes.

From the point of view of health, it is considered important that workers who have already performed night work in a shift cycle should not be required to work on a consecutive shift and that in general the same night worker should not perform overtime immediately before or after his/her period of night work in occupations involving special hazards or heavy physical or mental strain, except, of course, in cases of force majeure or of an actual or imminent accident. This second provision does not, therefore exclude the performance of overtime as such, but seeks to prevent workers defined as night workers in the aforementioned occupations from doing overtime directly connected with their night work. They may accordingly do overtime when they have not carried out night work or work in occupations without particular hazards. In addition, work should be organized in such a way that the scheduling and total hours for rotating shift workers and for night workers should take account of the more demanding nature of these forms of work and the problems which usually occur when shift work cycles change. Such requirements would meet certain problems related to the performance of rotating shift and night work in particular and would help to protect the worker against excessive hours of work without proper rest periods and breaks, while leaving the practical implementation of such requirements to national legislation and/or collective and other agreements.

Finally, it should be pointed out that night workers should be transferred, whenever practicable, to day work, for which they are fit

from a health point of view, if they suffer from health problems recognized as connected with the fact that they perform night work. In general it should be established - with the aim of reducing health problems - that a health assessment is carried out before an assignment to working time arrangements involving night work and at regular intervals and that at all times proper prevention and protection facilities - commensurate with the more demanding nature of shift and especially night work - are available and accessible to ensure that safety and health problems can be coped with promptly.

IV. FINAL PROVISIONS

30. The situation in the Member States with regard to, on the one hand, minimum rest periods and maximum durations of working time and, on the other, certain aspects of shift and especially night work show that in the vast majority of cases these aspects of the organization of working time have been and are the subject of statutory provisions, supported and supplemented by collective agreements. The reasons for introducing such legislation were mainly that workers should be protected in so far as possible against excessive working hours and especially detrimental working time arrangements, reasons which have been and continue to be supported by scientific evidence.
31. However, we should not lose sight of the fact that certain situations may arise which, for objective reasons, justify derogations to the provisions of the directive governing daily and weekly rest periods (Articles 3 and 4) and certain aspects of night work and shift work (Article 6). These situations are as follows:
- (i) in the case of acts of God, accidents or imminent risk of accident;
 - (ii) for certain specific activities which, by their cycle or nature may inevitably be in conflict with the above provisions. This is for example the case in agriculture at certain times of the year and in the hotel and restaurant sector and in tourism. This may also be the case for other activities in industry (e.g. on oil rigs) and the services (transport and distribution). These are as mentioned above, objective situations which can also be linked to specific periods of activity within enterprises which are exceptional and limited in time. In these well-defined cases which justify derogation the Member States have, however, to arrange for equivalent protection of the workers concerned within a given reference period (which may not exceed 6 months).
 - (iii) Where collective agreements have been concluded between the two sides of industry at appropriate levels defining an overall system of organizing working hours, which correspond to specific production conditions, going further than the area covered by the provisions of this directive but incorporating the minimum provisions of the above articles with regard to the health and safety of the workers concerned and under identical conditions of equivalent protection.
32. Finally, it should be emphasized that, given the differences arising from national practices, the subject of working conditions in general falls to varying degrees under the autonomy of both sides of industry who often act in the public authorities' stead and/or complement their action. To take account of these differences and in accordance with the principle of

subsidiarity the Commission takes the view that negotiation between the two sides of industry should play its full part within the framework of the proposed measures, provided that it is able to guarantee adherence to the principles set out in the Commission's proposals, as adopted by the Council. In other words, it is important in this field to take into consideration the fact that such agreements concluded by management and labour can in principle make a contribution to the application of Community directives, without, however, releasing the Member States concerned from the responsibility for attaining the objectives sought via these instruments.

33. The directive is based on Article 118A of the Treaty which stipulates that "the Member States shall pay particular attention to encouraging improvements, especially of the working environment, as regards the safety and health of workers, and shall set as their objective the harmonization of conditions in this area". As the directive of 12 June 1989 (89/391/EEC) stresses, "the incidence of accidents at work and occupational diseases is still too high" and "preventive measures must be introduced or improved without delay to safeguard the safety and health of workers and ensure a higher degree of protection". In this respect and as underlined by the constitution of the World Health Organization (preamble, first principle), it should be recalled that "health is a state of complete psychic, mental and social wellbeing and does not merely consist of an absence of disease or infirmity".
34. This directive sets out minimum provisions for which derogations will not be granted for economic reasons. These provisions, it should be noted, are not intended to place workers of small or medium-sized enterprises at a disadvantage in any way which cannot be justified objectively - in accordance with the terms of the declaration of the Intergovernmental conference on Article 118A, (2) of the Treaty. As regards taking into account sectoral circumstances and peculiarities, Article 188A constitutes a general legal base which does not preclude recourse to instruments with more specific legal basis - as long as lower standards than those laid down by this directive cannot be established. In the transport sector - whose different means are covered by specific provisions on social rules - road transport has been covered by Community rules since 1968 and the Commission will present a proposal concerning air transport in the near future. In presenting this proposal for a Directive on certain aspects of the organization of working time, the Commission considers that its provisions should be without prejudice to other specific Community provisions.

V. CONCLUSIONS

35. In submitting this proposal for a directive to Council, the Commission, in following up the Community Charter of the Fundamental Social Rights of Workers and in accordance with its action programme for implementing the Charter, aims to underline the importance which it attaches to the fact that "given the great importance in all of the Member States to the adaption, flexibility and organization of work, minimum provisions governing specific work situations in all the Member States should be defined at Community level" (COM(89)548 final). This is the light in which the present directive should be viewed.

Proposal for a
Council Directive

concerning certain aspects of the organisation of working time

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

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

Whereas, pursuant to that Article, such directives must avoid imposing administrative, financial and legal constraints 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 work¹ are fully applicable in relation to the matters covered by this Directive without prejudice to more stringent and/or specific provisions contained herein;

Whereas laying down minimum requirements with regard to individual periods of rest and of work improves the working conditions referred to in Article 118a;

Whereas the Community Charter of the Fundamental Social Rights of Workers states at Title I, point 7 that the completion of the internal market must lead to an improvement in the living and working conditions of workers, a process which must result from an approximation of these conditions, while maintaining the improvement, as regards in particular the duration and organisation of working time; whereas point 8 states that every worker of 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;

Whereas point 19 of the said Charter affirms that every worker must enjoy satisfactory health and safety conditions in his working environment and that appropriate measures must be taken in order to achieve further harmonization of conditions in this area while maintaining the improvement made;

Whereas the European Parliament considers it indispensable in its Resolution of 15 March 1989² on the social dimension of the internal

¹ OJ No L 183, 29.6.1989, p.1.

² OJ No C 96, 17.4.1989, p. 61.

market that minimum rules should be adopted which establish a ceiling for daily and weekly working time;

Whereas in order to achieve improvement in the health and safety of workers certain minimum daily and weekly rest periods should be complied with for all workers in the Community;

Whereas this Directive is consequent upon the need to lay down minimum rules for certain aspects of the organisation of working time from the point of view of the health and safety of the workers concerned; whereas these rules are without prejudice to other provisions which are propitious to a better state of health, such as annual paid leave;

Whereas research has shown that long periods of night work and alternations in shift work patterns can be detrimental to the health of workers and can endanger safety at the workplace;

Whereas particular care should therefore be taken to limit the duration of night work, to take account of alternations in shift work patterns, to limit the amount of overtime in connection with night work and duly to inform the competent authority of the introduction of night work;

Whereas the human body is especially sensitive at night to environmental disturbances and also to certain particularly burdensome forms of work organization such as piece work, assembly-line work or work at a pre-established pace;

Whereas it is important that a health assessment should be afforded to employees before being assigned to night work and at regular intervals thereafter, that they receive advice in order to prevent, reduce or avoid the adverse effects of night work and that night workers should be allowed to transfer to daytime work if their health so requires;

Whereas the features of minimum rest periods and certain aspects of the organization of night and shift working time, peculiar to the seasonal nature of the work or specific to certain activities or resulting from exceptional situations limited in time should be duly taken into account and at the same time equivalent protection afforded to the employees concerned;

Whereas changes in the patterns of working time, and more in particular adjustments to the pace of work may affect the workload of the workers concerned and thus be harmful to their health and safety; whereas it is therefore necessary to take account of these factors when patterns of work are changed;

Whereas this Directive covers only certain fundamental aspects of the organization of working time, which are considered particularly important from the point of view of workers' health and safety at the workplace,

HAS ADOPTED THIS DIRECTIVE:

1993

SECTION I

Scope and definitions

Article 1

1. This Directive applies to minimum daily, weekly and yearly rest periods and to certain aspects of night and shift work.
2. The provisions of Directive 89/391/EEC are fully applicable to the matters referred to in paragraph 1 without prejudice to more stringent and/or specific provisions contained in this Directive.

Article 2

For the purpose of this Directive the following definitions shall apply:

1. "working time" means hours of work as laid down by legislation, collective/enterprise agreement or individual employment contract during which the employee is at the disposal of the employer at the worksite;
2. "rest period" means any period after the normal daily or weekly performance of work during which the employee is not at the disposal of the employer;
3. "night work" means all work performed during a period of not less than seven consecutive hours comprised between 8.00 p.m. and 9.00 a.m.;
4. "shift work" means a method of work organisation whereby workers succeed each other in accordance with a certain time schedule; this may involve rotating or successive crews and be discontinuous or continuous;
5. "night worker" means an employee who performs night work, whether through shift work or otherwise on a regular basis;
6. "shift worker" means an employee rostered into a shift work schedule.

SECTION II

Daily, weekly and yearly rest

Article 3

Member States shall adopt the necessary measures to ensure compliance with the minimum daily rest period of eleven consecutive hours per period of 24 hours.

Article 4

Member States shall adopt the necessary measures to ensure compliance, in every seven-day period, with the minimum period of one rest day on average following without interruption the daily rest period as defined in Article 3 calculated over a reference period of not more than fourteen days.

Article 5

Member States shall adopt the necessary measures to ensure that all workers are afforded an annual paid holiday for a minimum period; the procedures relating to duration and any splitting shall be determined in accordance with national practices.

Article 6

The performance of overtime must not interfere with the minimum rest periods laid down in Articles 3 and 4.

SECTION III

Night work, shiftwork and patterns of work

Article 7

1. Normal hours of work for night workers shall not exceed an average of eight hours in any 24-hour period calculated over a reference period not longer than fourteen days in which they perform night work.
2. In the event of shift work involving night work the working of two consecutive full-time shifts shall be prohibited.
3. Subject to the provisions contained in paragraph 1, no overtime shall be performed by night workers before or after a daily period of work which includes night work in occupations involving special hazards or heavy physical or mental strain.
4. The scheduling and total length of breaks for rotating shift workers and for night workers shall take account of the more demanding nature of those forms of working time.

Article 8

1. Employees durably subject to working time arrangements involving night work shall be entitled to a health assessment without charge prior to their assignment and at regular intervals thereafter.
2. Where a night worker suffers from health problems recognized to be connected with the fact that he performs night work he shall be transferred, as soon as possible, to day work for which he is fit.

Article 9

The employer who regularly uses night workers shall duly inform the authorities competent in matters of health and safety.

Article 10

Member States shall adopt the necessary measures to ensure that night workers and rotating shift workers shall have a level of protection with regard to health and safety commensurate with the nature of their work. The employer shall ensure that protection and prevention facilities are available or accessible at all times.

Article 11

Member States shall ensure that employers take the necessary measures to ensure that changes made to patterns of work take account, according to the type of activity, of health and safety requirements, especially as regards breaks during working hours.

SECTION IV

Final provisions

Article 12

Derogations from the provisions set out in Articles 3, 4 and 7 are permitted:

1. In cases of force majeure, or of an actual or imminent accident, provided that equivalent compensatory rest periods are granted to the employees concerned;
2. where the seasonal nature of the work performed or the features peculiar to certain activities or exceptional situations limited in time objectively conflict with the said provisions, provided that equivalent compensatory rest periods are granted within a reference period which must not exceed six months;
3. In case of collective agreements made between employers and representatives of the workers at the appropriate levels, aiming at setting up a comprehensive set of provisions regarding the adjustment of working time corresponding to the specific conditions of the enterprise, including daily and weekly rest periods as well as night- and shift-work, subject to the condition that on these specific points equivalent periods of compensatory rest are granted to the workers within a reference period that must not exceed six months.

Article 13

The provisions contained in this Directive shall be without prejudice to other specific provisions taken by the Community.

Article 14

Member States shall comply with this Directive by the 31 December 1992 at the latest, by bringing into force the laws, regulations or administrative provisions necessary or by ensuring that the two sides of industry establish the necessary provisions through agreement, without prejudice to the obligation on the Member States to achieve the results to be obtained by this Directive.

The provisions adopted by the Member States pursuant to the first paragraph shall make express reference to this Directive.

Member states shall forthwith inform the Commission of the measures taken thereunder.

Article 15

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

Proposal for a Council Directive on certain aspects of the organization of working time

I What is the main reason for introducing the measure?

The policy objective is to establish minimum rules at Community level with respect to the establishment of minimum rest periods per day and per week and to the performance of shift, especially night work. Based on Article 118a of the Treaty the proposal is linked to the provisions of that Article, i.e. to lay down minimum prescriptions in the field of the work environment, in particular with respect to health and safety at the workplace.

II Features of the businesses in question

As the other Directives based on Article 118a, notably the framework Directive 89/391/EEC, this proposal is intended to apply to all enterprises and the public service, as defined in the framework Directive. Therefore the enterprises of all sizes and all sectors of activity - trades, manufacturing, services and agriculture - are concerned by the Directive. SME's are affected in the same way as large enterprises. Night work is not only used in large enterprises but also in activities where SME play an important role, such as trades, restaurants and hotels and commerce.

III What obligations does this measure impose directly on businesses

The provisions of this Directive are intended to ensure certain protective rights to workers who perform shift and especially night work by laying down provisions with respect to the conditions under which these forms of working time arrangements may be carried out (information of night work on a regular basis, a certain number of hours of night work in a 24-hour period, health assessment of regular night workers, etc.), provisions which exist already to a large extent in the Member States. Also with regard to minimum rest periods, the provisions laid down by this Directive are already respected in practice in the large majority of Member States and very often extended by collective agreements. The aim of this proposal is that all workers will be ensured these rights and that by these provisions the conditions at the workplace will be improved leading to a better minimum protection for the health and safety of the workers.

IV What indirect obligations are national, regional or local authorities likely to impose on businesses?

To the extent that national authorities have to transpose the provisions of this Directive into national legislation there will partly be an impact, i.e. in those cases where existing legislation or collective agreements have not yet laid down such minimum requirements.

V Are there any special provisions in respect of SME's?

There are no specific provisions for SME's but the provisions of Article 118a have to be observed which state that the creation and development of SME's must not be held back. The provisions proposed should also apply to SME's, albeit taking into account the fact that they may be waived in situations which, objectively, conflict with them, such as when they relate to the seasonal nature of the work performed or to features peculiar to certain activities or exceptional situations limited in time, provided that equivalent protection is granted within a reference period. These derogations may especially concern SME's.

VI What is the likely effect on

(a) the competitiveness of businesses?

By rendering the working conditions at the workplace healthier for the workers the competitiveness of businesses will be increased since the human potential will be used in a more responsible way. The flexibility built into a large number of the provisions of the proposal and possibilities of derogation contribute to increase the competitive capacity of the enterprises. Longer term effects of protective measures, as envisaged by the proposal will reveal, as is already the case in a number of Member States and in other industrialized countries, that better protection of the workers at the workplace also contributes to increasing the competitiveness of such enterprises.

(b) employment?

The proposal is couched in such terms that while granting the employees certain protective rights, especially with regard to minimum rest periods and recourse to night workers the flexibility of businesses is essentially maintained. Certain reorganizations of working hours at microeconomic level may entail for some businesses economic losses and may tend to reduce their manpower levels. Others, however, will gain both with regard to productivity and employment when reorganizing working hours. In any case, since the Directive only prescribes minimum requirements it is difficult to forecast employment effects because standards more favourable to the workers may be laid down by national legislation and/or collective agreements.

VII Have the relevant representative organisations been consulted?

A comprehensive consultative process has been held with both sides of industry (see annex) and the observations and comments of the parties consulted have been taken into account in the final draft of this proposal.

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